

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600



LEGISLATIVE COMMISSION (775) 684-6800
BARBARA E. BUCKLEY, *Assemblywoman, Chair*
Lorne J. Malkiewich, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
MORSE ARBERRY JR., *Assemblyman, Chairman*
Mark W. Stevens, *Fiscal Analyst*
Gary L. Ghiggeri, *Fiscal Analyst*

LORNE J. MALKIEWICH, *Director*
(775) 684-6800

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830
PAUL V. TOWNSEND, *Legislative Auditor* (775) 684-6815
DONALD O. WILLIAMS, *Research Director* (775) 684-6825

Legislative Commission
Legislative Building
Carson City, Nevada

We have completed an audit of the Nevada College Savings Program administered by the Office of the State Treasurer and the Board of Trustees of the College Savings Plans of Nevada. This audit is part of the ongoing program of the Legislative Auditor as authorized by the Legislative Commission. The purpose of legislative audits is to improve state government by providing the Legislature, state officials, and Nevada citizens with independent and reliable information about the operations of state agencies, programs, activities, and functions. The results of our audit, including findings, conclusions, recommendations, and the State Treasurer's response, are presented in this report.

We wish to express our appreciation to the management and staff of the State Treasurer's Office for their assistance during the audit.

Respectfully presented,

A handwritten signature in black ink, appearing to read "Paul V. Townsend".

Paul V. Townsend, CPA
Legislative Auditor

May 14, 2007
Carson City, Nevada

STATE OF NEVADA
OFFICE OF THE STATE TREASURER
NEVADA COLLEGE SAVINGS PROGRAM

AUDIT REPORT

Table of Contents

	<u>Page</u>
Executive Summary	1
Introduction	8
Background	8
Scope and Objectives	11
Findings and Recommendations	12
Program Transactions Not Processed Through State's Accounting System.....	12
Program Funds Not Deposited in the State Treasury	13
Expenses Paid Outside of State's Accounting System Bypass Budget Process	25
Financial Activity Not Accounted for in the Trust Fund	30
Contract Requirements Not Followed	37
Legal Services Contract Did Not Comply With Requirements	37
Payments to Plan Advisor Did Not Adhere to Contract Terms.....	40
Marketing Contract Not Properly Approved and Maximums Were Exceeded	42
Oversight of Contractors Was Inadequate.....	44
No Formal Accounting or Internal Control Procedures.....	47
Accountability for Public Resources	47
State Requirements for Internal Controls	48
Appendices	
A. Audit Methodology.....	50
B. Relevant Sections of Nevada Revised Statutes Chapter 353B	55
C. Administrative Budget Account – Budget to Actual Comparison, Fiscal Years 2002 – 2007	58
D. College Savings Plan Information – by State as of December 31, 2006	59

STATE OF NEVADA
OFFICE OF THE STATE TREASURER
NEVADA COLLEGE SAVINGS PROGRAM

AUDIT REPORT

Table of Contents
(continued)

	<u>Page</u>
E. Sources of Program Funding, Fiscal Years 2002 – 2007	60
F. Expenses Processed Outside State’s Accounting System, Fiscal Years 2002 – 2007	61
G. Plan Assets and Accounts Held, 2002 – 2006.....	62
H. Invoices for Advertising and Marketing Services, Fiscal Years 2003 – 2007	63
I. Summary of Legal Services Provided, Fiscal Years 2002 – 2006	64
J. Legislative Counsel Legal Opinion	65
K. Response From the Office of the State Treasurer	75

EXECUTIVE SUMMARY

OFFICE OF THE STATE TREASURER NEVADA COLLEGE SAVINGS PROGRAM

Background

In 2001, the Legislature, through Assembly Bill 554, established the Nevada College Savings Program and the Nevada College Savings Trust Fund. The Program's mission is to increase the number of families who save for higher education expenses by providing tax-free investment methods. The Program is administered by the Office of the State Treasurer and the Board of Trustees of the College Savings Plans of Nevada. The State Treasurer serves as the Board's chairman. The five member board also includes the Director of the Department of Administration, a designee of the Chancellor of the University System, and two Governor appointees. State law empowers the Board with the responsibility of governing the Program's activities. The Chairman is responsible for adopting regulations to establish and carry out the Nevada College Savings Program consistent with the provisions of Title 26 of the U.S. Code Section 529.

Nevada's Program is the seventh largest in the country, based on total assets as of the end of 2006, with total assets of \$3.3 billion. The Program includes four plans administered by a program manager under contract with the State. The Program earns fees from the assets in the four plans. The State uses the fees to provide oversight and promote the Program. The Program also receives funds from the Program Manager for administration and marketing.

Purpose

The purpose of our audit was to determine whether: (1) the financial activities of the Nevada College Savings Trust Fund were properly accounted for, and (2) the operations of the Program have been conducted in accordance with applicable laws, regulations, and

EXECUTIVE SUMMARY

OFFICE OF THE STATE TREASURER NEVADA COLLEGE SAVINGS PROGRAM

contractual obligations. This audit included the activities of the Nevada College Savings Program administered by the Office of the State Treasurer and the Board of Trustees of the College Savings Plans of Nevada from inception of the Program in 2001 to December 31, 2006.

Results in Brief

Although participant money in the Nevada College Savings Program was properly handled and accounted for, money earned by the State was not. More than \$6 million of state funds were held outside the state system and used to pay Program expenses. As a result, expenditure levels authorized by the Legislature have been exceeded. Furthermore, the Program's financial transactions have not been accounted for in the Trust Fund created by the Legislature. Therefore, controls normally associated with state funds have not been established, including formal accounting records, a system of accounts, and periodic financial reports. In addition, the State Treasurer's Office has not established accounting or internal control procedures for the Program. Finally, the State Treasurer's Office and the Board of Trustees did not always follow statutory requirements when contracting for services to operate the Program. Some contracts were not properly approved and payments were made in excess of amounts specified in three contracts.

Principal Findings

- Of the \$11.2 million in funding available to the State since the Program started, more than \$6 million was not deposited in the State Treasury. Pursuant to instructions from Program officials in the State Treasurer's Office, the Program Manager held a portion of the state's funds rather than remitting them

EXECUTIVE SUMMARY

OFFICE OF THE STATE TREASURER NEVADA COLLEGE SAVINGS PROGRAM

for deposit to the State Treasury. We determined a total of \$2.6 million of funds held by the Program Manager were used to pay administrative and marketing expenses outside of the state system. Furthermore, pursuant to Board contracts, more than \$3.4 million was paid directly to the Plan Advisor from state Program fees by the Program Manager. (page 13)

- On April 2, 2003, Program officials in the State Treasurer's Office notified the Program Manager via e-mail that they were not to transmit any future fees to the State. They requested the state portion of the fees be held until they provided a request for the funds. This fee distribution arrangement between the state and the Program Manager continued until December 2006. (page 19)
- We determined that more than \$6 million was paid for Program expenses from funds held outside the State Treasury. Of this amount, more than \$3.4 million was paid by program managers to the state's Plan Advisor. Of the remaining \$2.6 million, \$1,536,000 was paid for marketing and advertising services, nearly \$985,000 for legal services, and \$45,000 for other expenses. These payments were made by the Program Manager as directed by officials within the State Treasurer's Office. Since these payments were not processed through the State's Accounting System, they were never charged against the Program's legislatively approved budget. If the State Treasurer's Office had processed these transactions through the State's Accounting System, revisions to the Program's Administrative Budget Account would have been required. Pursuant to the provisions of the State Budget Act, these work program revisions would have required approval of the State Budget Director and the Legislature's Interim Finance Committee. (page 25)

EXECUTIVE SUMMARY

OFFICE OF THE STATE TREASURER NEVADA COLLEGE SAVINGS PROGRAM

- During the 5½-year period the Program has been in operation, the Legislature approved total expenditures of \$1.6 million. However, more than \$7 million of Program expenses have been incurred during that time. Because most of these expenses were paid outside of the state system, the budgetary controls normally associated with state expenditures have been bypassed. As a result, administrative and marketing expenses for the Program have exceeded the legislatively approved budget each year the Program has been in operation. (page 28)
- At the Board of Trustees meeting on November 17, 2006, the Board approved a contract amendment with its Program Manager which ended the practice of paying Program expenses outside the state system. This amendment contained language indicating all future money payable to the State would be paid to the Board for deposit into the Administrative Account in the Nevada College Savings Trust Fund. It further indicated that no funds would be expended by the Program Manager on behalf of the Board for marketing or administration except funds appropriated in the state budget. (page 29)
- The financial transactions of the Nevada College Savings Program have not been accounted for in the Trust Fund established by the Legislature when the Program was created. Although the Trust Fund was initially set up in the State's Accounting System, it was removed by the State Controller's Office at the end of fiscal year 2002. As a result, the accounting for the Program's administrative activity was transferred to a budget account within the State General Fund. (page 31)
- The State Treasurer's Office has not prepared financial statements for the Trust Fund since the Program began. Although three of the four plans under the Program had annual audits, we found no evidence they were presented to the Board of

EXECUTIVE SUMMARY

OFFICE OF THE STATE TREASURER NEVADA COLLEGE SAVINGS PROGRAM

Trustees. Although these audits help ensure participant money is being properly recorded, safeguarded, and accounted for within each plan, they do not present a consolidated financial statement of the entire Trust, or the Program. (page 36)

- A law firm has been paid nearly \$985,000 for legal services since inception of the Program. Since the contracts for these services were with the State Treasurer's Office, the Board of Trustees has not signed or approved any of these contracts. In addition, the Board has never been a party to any of the contracts, although it designated the firm as outside counsel. NRS 353B.370 requires the Board of Trustees to enter into contracts for services provided to the Program. Without being party to the contract, the Board could be limited in its ability to direct, oversee, and monitor the services being provided. (page 37)
- The composite hourly rate paid for legal services during the term of the contract ended June 30, 2002, was \$428.64. This is significantly higher than the \$225 specified in the contract. Consequently, the law firm was paid nearly \$96,000 in excess of the contract rate. (page 39)
- The billings provided by the law firm were not submitted to the State Treasurer's Office on a timely basis. The average time covered by billings was over 1 year. At Program inception, the law firm agreed to accrue fees until funds were available to pay the charges. This resulted in the State determining when billings would be requested. Program officials in the State Treasurer's Office stated they did not require the law firm to submit billings more timely since the Program often did not have the funds to pay the bill. Based on our analysis, it appears the Program had sufficient funds in fiscal year 2004 to pay the contractor when services were provided. However, Program officials did not request monthly billings. For

EXECUTIVE SUMMARY

OFFICE OF THE STATE TREASURER NEVADA COLLEGE SAVINGS PROGRAM

example, two billings submitted in fiscal year 2006 each covered 21 months. (page 40)

- The State Treasurer's Office made payments to the Plan Advisor of about \$500,000 which were not properly supported or did not adhere to the terms of the contract. First, the contractor was paid \$200,000 for initial program development services, including \$141,000 for reimbursement of expenses. However, the contractor was paid without sufficient documentation to support the out-of-pocket expenses. Second, the Plan Advisor was paid \$300,000 from monies the State received for marketing and administrative support from the Program Manager. Since this was not money earned on asset-based or account-based fees, the State was not contractually obligated to make these payments. (page 40)
- The State Treasurer's Office made payments to a marketing firm in excess of the \$185,000 maximum allowed each year under the contract. Payments made in fiscal year 2005 exceeded the contract maximum by \$451,366 and in fiscal year 2006 by \$878,705. (page 43)
- Program officials in the State Treasurer's Office did not provide adequate oversight of contractors to ensure key Program information was provided to the Board. This included audited financial statements for each of the four plans that make up the Trust. Other information not regularly provided to the Board included reports on: investment performance; performance measures related to customer service; proposed marketing plans and budgets from the Program Manager; and comparisons between the Nevada College Savings Program and other states' programs. The State Treasurer's Office had little documentation that contractors had provided such information or of follow-up efforts to request the information. (page 44)

EXECUTIVE SUMMARY

OFFICE OF THE STATE TREASURER NEVADA COLLEGE SAVINGS PROGRAM

- The State Treasurer's Office has not established accounting or internal control procedures to help guide staff in carrying out their responsibilities for the Nevada College Savings Program. The lack of written control procedures contributed to many of the problems found during our audit. Internal controls are an integral component of an organization's management. It comprises the plans, methods, and procedures used in meeting an agency's mission, goals, and objectives. (page 47)

Recommendations

This report contains 13 recommendations to improve the financial and administrative practices of the Nevada College Savings Program. Specifically, the State Treasurer's Office should record all Program transactions through the State's Accounting System in the Nevada College Savings Trust Fund or other accounts budgeted by the Legislature. In addition, the Office should prepare annual financial statements and develop detailed accounting and internal control procedures. Furthermore, the Office and the Board of Trustees should comply with laws and regulations for entering into contracts and paying contractors. (page 79)

Agency Response

The Office, in response to our report, accepted the 13 recommendations. (page 75)

Introduction

Background

Nevada Program Established in 2001

In 2001, the Legislature, through Assembly Bill 554, established the Nevada College Savings Program and the Nevada College Savings Trust Fund. The Program's mission is to increase the number of families who save for higher education expenses, thus allowing more students to attend college. The Program is designed to provide tax-free investment methods to save for future higher education expenses.

The Program is administered by the Office of the State Treasurer and the Board of Trustees of the College Savings Plans of Nevada. The State Treasurer serves as the Board's chairman. The five member board also includes the Director of the Department of Administration, a designee of the Chancellor of the University System, and two Governor appointees. State law empowers the Board with the responsibility of governing the Program's activities. The Chairman is responsible for adopting regulations to establish and carry out the Nevada College Savings Program consistent with the provisions of Title 26 of the U.S. Code Section 529.

Program Authorized Under Federal Law

Section 529 requires programs to be established and maintained by a state, agency, or other eligible educational institution. Under Section 529, there are two types of eligible tax-advantaged college savings plans. The first type is a college savings plan wherein after-tax dollars are invested and any earnings grow tax-free. Funds withdrawn from a college savings plan to pay for qualified higher education expenses are free from federal income tax. Savings proceeds can be used to pay for qualified higher education expenses, including tuition, room and board, books, and other costs. The Nevada College Savings Program qualifies as a Section 529 college savings program. Investments in the Program are municipal fund securities issued by the Nevada College Savings Trust. When participants invest in the Program, they are purchasing units issued by the Trust, which invests the money in the underlying funds.

The second type of 529 plan is a prepaid tuition plan, which allows for tax-advantaged advance payment of tuition. A purchaser enters into a contract for the future payment of tuition for a beneficiary. Beneficiaries later use these credits towards attending a qualifying educational institution. The Nevada Prepaid Tuition Program qualifies as a Section 529 prepaid tuition plan. The Board is also responsible for the Nevada Prepaid Tuition Program.

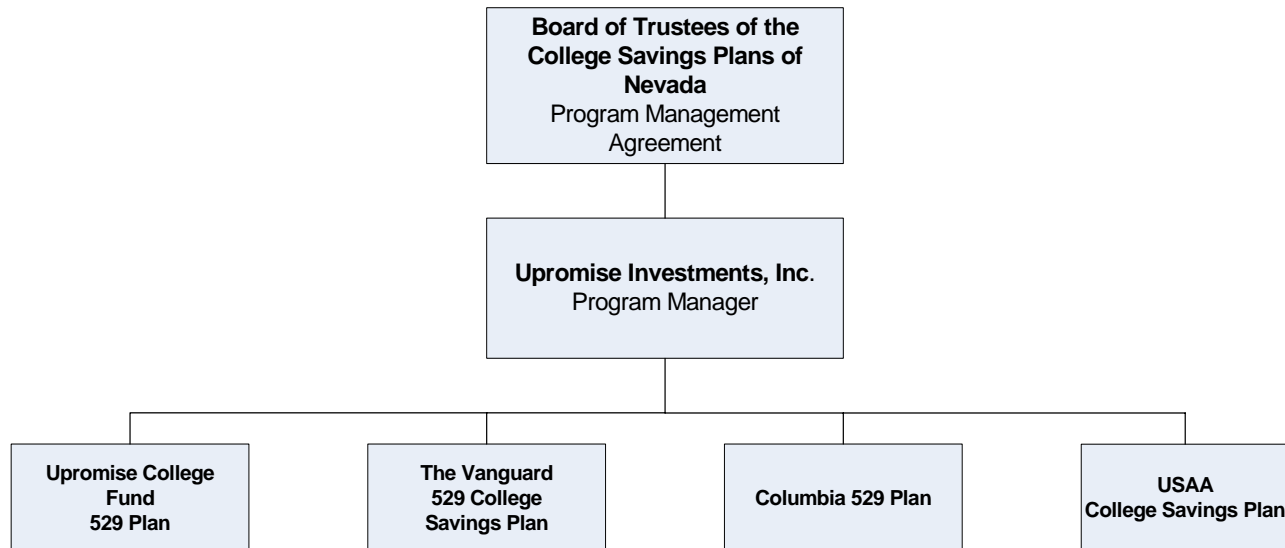
Participants from around the country have invested in Nevada's College Savings Program. As of December 31, 2006, Program records indicate only about 1.4% of the \$3.3 billion in total assets invested through the state's Program are from Nevada residents. Appendix G includes additional data on the number of accounts and assets held by Nevadans compared to the totals in the Program.

Structure of Nevada Program

In August 2001, the Board contracted with G.I.F. Services, LLC, to provide plan advisory services including: program development and implementation, monitoring of vendors providing program management and investment services, and other assistance necessary to maintain a quality program. In March 2002, the Board contracted with Upromise Investments, Inc., to serve as the Program Manager to handle the day-to-day operations of the Program including fund management and marketing, administration of a comprehensive investment plan for the fund, and selection of investment managers.¹ Upromise has partnered with various investment managers to establish additional 529 plans within the Nevada College Savings Trust. These investment managers currently include: The Vanguard Group Inc., USAA Investment Management Company, and Columbia Management Group, LLC. Exhibit 1 shows the basic structure of the Nevada College Savings Program.

¹ For a short time at the start of the Program, Strong Capital Management provided program management services along with Upromise until concerns arose concerning Strong's implication in the mutual fund market-timing trade scandal.

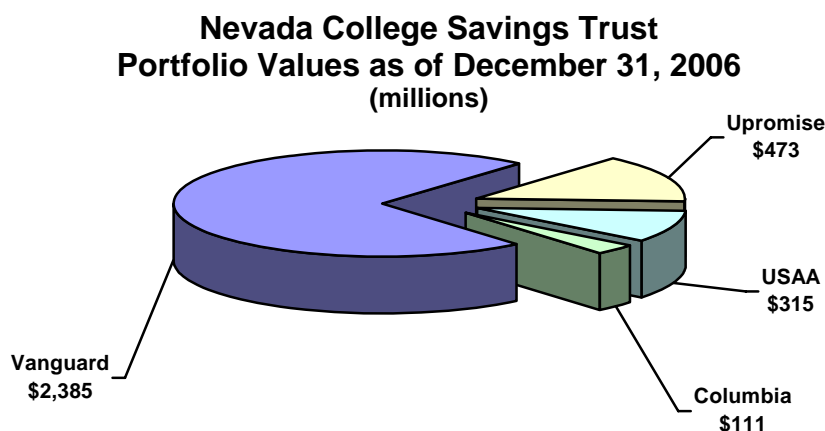
Exhibit 1



Source: Upromise, Inc.

Upromise began its partnership with Vanguard in Nevada with the development of the Upromise College Fund 529 Plan and the Vanguard 529 College Savings Plan in 2002. These two plans total over \$2.8 billion of the \$3.3 billion in the Program as of December 31, 2006. Nevada's Program is the seventh largest in the country, based on total assets as of the end of 2006.² Exhibit 2 shows the dollar assets in each of the four college savings plans that make up the Trust as of December 31, 2006.

Exhibit 2



Source: Upromise, Inc.

² See Appendix D for college savings plan information by state.

Budget and Finances

The Program does not receive General Fund dollars. Rather, the Program earns fees from the assets in the four plans. The State uses the fees to provide oversight and promote the Program. The Program also receives funds from the Program Manager for administration and marketing. The Administrative Account has been set up as a General Fund Budget Account in the State's Accounting System to account for the receipt and expenditure of these funds (#1092 - Nevada College Savings Trust). The Program is staffed by a Sr. Deputy Treasurer who has been involved with the Program since its inception. Beginning in fiscal year 2006, the Trust began making transfers to the Nevada Higher Education Prepaid Tuition Program to assist in the repayment of a \$3.7 million General Fund loan to the Prepaid Tuition Program. Additionally, operating expenses consist primarily of advertising costs, budgeted at \$82,500 per year, which are provided through a contracted vendor. Appendix C compares budget and actual figures for the Administrative Budget Account from inception of the Program through December 31, 2006.

Scope and Objectives

This audit is part of the ongoing program of the Legislative Auditor as authorized by the Legislative Commission, and was made pursuant to the provisions of NRS 218.737 to 218.893. The Legislative Auditor conducts audits as part of the Legislature's oversight responsibility for public programs. The purpose of legislative audits is to improve state government by providing the Legislature, state officials, and Nevada citizens with independent and reliable information about the operations of state agencies, programs, activities, and functions.

This audit included the activities of the Nevada College Savings Program administered by the Office of the State Treasurer and the Board of Trustees of the College Savings Plans of Nevada from inception of the Program in 2001 to December 31, 2006. The objectives of our audit were to determine whether: (1) the financial activities of the Nevada College Savings Trust Fund were properly accounted for, and (2) the operations of the Program have been conducted in accordance with applicable laws, regulations, and contractual obligations.

Findings and Recommendations

Although participant money in the Nevada College Savings Program was properly handled and accounted for, money earned by the State was not. More than \$6 million of state funds were held outside the state system and used to pay Program expenses. As a result, expenditure levels authorized by the Legislature have been exceeded. Furthermore, the Program's financial transactions have not been accounted for in the Trust Fund created by the Legislature. Therefore, controls normally associated with state funds have not been established, including formal accounting records, a system of accounts, and periodic financial reports. In addition, the State Treasurer's Office has not established accounting or internal control procedures for the Program. Finally, the State Treasurer's Office and the Board of Trustees did not always follow statutory requirements when contracting for services to operate the Program. Some contracts were not properly approved and payments were made in excess of amounts specified in three contracts.

Program Transactions Not Processed Through State's Accounting System

The Nevada College Savings Program has earned more than \$11.2 million in program fees and other revenues since it began in 2001. However, only \$5.2 million of these funds were deposited in the State Treasury. The remaining \$6 million was held outside the State's Accounting System by contractors at the request of state Program officials. These funds were then used to pay certain state Program expenses as directed by State Treasurer's Office officials, or pursuant to terms of state contracts. Because these expenses were paid outside the state system, the budgetary controls normally associated with state expenditures have been bypassed. As a result, administrative and marketing expenses for the Program have exceeded the budget approved by the Legislature each year the Program has been in operation. Although participant money was properly handled and accounted for by the program and investment managers, it was not recorded in the Nevada College Savings Trust Fund, as required by state law. In addition, the Program lacks a functioning accounting

system to record, classify, summarize, and report the financial activities of the Trust Fund. Consequently, periodic financial statements for the Trust Fund have not been produced.

Program Funds Not Deposited in the State Treasury

Of the \$11.2 million in funding available to the State since the Program started, more than \$6 million was not deposited in the State Treasury. Pursuant to instructions from Program officials in the State Treasurer's Office, the Program Manager held a portion of the state's funds rather than remitting them for deposit to the State Treasury. We determined a total of \$2.6 million of funds held by the Program Manager were used to pay administrative and marketing expenses outside of the state system. Furthermore, pursuant to Board contracts, more than \$3.4 million was paid directly to the Plan Advisor from State funds by the Program Manager.

State Receives Fees and Other Funds

The Nevada College Savings Program receives several types of fees and other funds to pay Program expenses. Revenues include fees earned on a percentage of the Trust assets, account maintenance fees, and fixed fees. In addition, the Program received other payments from program managers to support administrative and marketing expenses pursuant to contracts.

Program participants are charged varying fees and expenses, depending on the 529 plan selected. These costs are detailed in each plan description and participant agreement. Included in the charges are fees for the State, the Program Manager, and the Investment Manager. During the period covered by our audit, the state portion of the annual asset-based fees ranged between .086% and .15% of the total assets, depending on the plan and the asset base in each plan. In addition, some account owners are charged an annual account maintenance fee of either \$15 or \$20, depending on the plan. Annual asset- and account-based fees are deducted from participant accounts, which reduce the returns received on their investments. The Program Manager collects the state's fees from the Investment Manager and notifies the State of the fees earned. Since the Program began operations in 2001, the State earned \$4.6 million from annual asset-based fees. The state's share of account-based fees exceeded \$1.75 million through December 31, 2006.

On December 28, 2006, the Board of Examiners approved a contract amendment between the Board of Trustees and the Program Manager which changed the fee structure for the state's two largest 529 plans (Contract Amendment #2). In lieu of the annual asset fees, the State agreed to accept a one-time payment from the Program Manager of \$1 million and annual payments from the Investment Manager of \$1.5 million, indexed for inflation.

In accordance with the terms of the contract for plan advisory services, the Plan Advisor received 1/3 of all asset-based and account-based fees earned by the State. Plan advisory services included program development and implementation, compliance and performance monitoring of vendors providing administration and investment services, and other services as described in the contract. The contract specified payments to the Plan Advisor were to be made directly by the Program Manager from state earned fees. Therefore, payments for these services were made outside the State's Accounting System pursuant to the terms of the state's contract with the Plan Advisor. Although the contract provided for this method of payment, the Contract Summary Form presented to the Board of Examiners indicated payments to the contractor would be charged to operating expenditures in a state budget account.

The State also received funds from program managers to assist with certain Program costs. Most of these funds are for payment of marketing and administrative costs, as outlined of the contracts. Through December 31, 2006, the State received a total of \$2.15 million of these funds. In addition, other financing sources have totaled more than \$253,000 since the Program began.

The following exhibit shows the total source of funds for the Nevada College Savings Program since its inception in 2001.³

³ See Appendix E for a detailed schedule of Program funding sources for each year of operation.

Exhibit 3

**Nevada College Savings Program
Source of Program Funds
Fiscal Years 2002 – 2007**

	Fiscal Year Ended June 30						Totals
	2002	2003	2004	2005	2006	2007 ⁽¹⁾	
Program Fees							
Asset-Based Fees	\$8,145	\$70,768	\$480,208	\$1,140,183	\$1,852,789	\$1,049,912	\$4,602,005
Account-Based Fees		49,995	168,285	284,785	447,870	806,871	1,757,806
Fixed Fees						2,500,000	2,500,000
Total Program Fees	8,145	120,763	648,493	1,424,968	2,300,659	4,356,783	8,859,811
Marketing & Administrative Support	300,000	450,000	250,000	250,000	600,000	300,000	2,150,000
Other Sources							
Loan Proceeds	30,000						30,000
Reimbursement of Legal Expenses			169,520				169,520
Interest Earned	794	2,460	3,547	12,354	26,163	7,102	52,420
Other			1,250			257	1,507
Total Other Sources	30,794	2,460	174,317	12,354	26,163	7,359	253,447
Total Program Funds Available	\$338,939	\$573,223	\$1,072,810	\$1,687,322	\$2,926,822	\$4,664,142	\$11,263,258

Source: State Treasurer's Office records, State's Accounting System, contractor records, and contracts.

⁽¹⁾ As of December 31, 2006.

More Than Half of the Program Funds Were Not Deposited in State Treasury

Even though the Program received more than \$11.2 million of funding since 2001, only \$5.2 million of these funds were deposited in the State Treasury or processed through the State's Accounting System. The following exhibit shows the total amounts deposited in the Nevada College Savings Trust Administrative Budget Account (1092), within the State's Accounting System, since inception of the Program.

Exhibit 4

**Nevada College Savings Program
Total Deposits to Administrative Account in State Treasury
Fiscal Years 2002 – 2007**

	Fiscal Year Ended June 30						Totals
	2002	2003	2004	2005	2006	2007 ⁽¹⁾	
Program Fees	\$5,430	\$61,164	\$219,190	\$408,067	\$269,479	\$3,408,021	\$4,371,351
Marketing & Administrative Support	66,525	106,521	167,260	250,000		200,000	790,306
Loan Proceeds	30,000						30,000
Interest	794	2,460	3,547	11,735	26,163	7,102	51,801
Total Deposits to Administrative Budget Account 1092	\$102,749	\$170,145	\$389,997	\$669,802	\$295,642	\$3,615,123	\$5,243,458

Source: State Treasurer's Office records, State's Accounting System, contractor records, and contracts.

⁽¹⁾ As of December 31, 2006.

Exhibit 5 shows the total Program funding not deposited in the State Treasury since operations began in 2001.

Exhibit 5

**Nevada College Savings Program
Total Program Funds Not Deposited in State Treasury
Fiscal Years 2002 – 2007**

	Fiscal Year Ended June 30						Totals
	2002	2003	2004	2005	2006	2007 ⁽¹⁾	
Total Program Funds Available	\$338,939	\$573,223	\$1,072,810	\$1,687,322	\$2,926,822	\$4,664,142	\$11,263,258
Deposits to Budget Account 1092	102,749	170,145	389,997	669,802	295,642	3,615,123	5,243,458
Total Program Funds Not Deposited In State Treasury	\$236,190	\$403,078	\$682,813	\$1,017,520	\$2,631,180	\$1,049,019	\$6,019,800

Source: State Treasurer's Office records, State's Accounting System, contractor records, and contracts.

⁽¹⁾ As of December 31, 2006.

State Laws Require Funds Be Deposited in State Treasury

Normally, state revenues are deposited directly to the State Treasury and processed through the state's accounting and budgetary control systems. Financial administration laws for state agencies require all money belonging to the State be deposited in the State Treasury. In addition, the State Budget Act requires those deposits be made to work programs within the budget accounts established by the Legislature. Finally, NRS 353B.340 and 353B.350 which establish and provide for the activity within the Nevada College Savings Trust Fund, require the Administrative Account within the Fund be used for the deposit and disbursement of money to administer and market the Program. Excerpts of applicable sections of these state laws are presented below.⁴

⁴ See Appendix B for complete text of NRS Chapter 353B related to the Nevada College Savings Program.

NRS 353.249

Except as otherwise expressly provided in a particular statute:

1. All money which belongs to the State must be deposited in the State Treasury.

NRS 353.253

Every agency, department and institution of the State of Nevada shall deposit all money received from the Federal Government, the counties or other sources, in the State Treasury as provided in NRS 353.250 unless otherwise provided by law. These deposits must be made to work program accounts directly or to other budget accounts.

NRS 353B.340

1. The Nevada College Savings Trust Fund is hereby created.
3. The Trust Fund consists of:
 - (a) All legislative appropriations made thereto;
 - (b) All money acquired by or for the use of the Trust Fund from:
 - (1) Any other governmental source, including, without limitation, any grant from the Federal Government, or a state or local government; or
 - (2) Any private source, including, without limitation, any gift, bequest, devise or endowment;

NRS 353B.350

1. The Trust Fund must be administered by the State Treasurer.
2. The State Treasurer shall establish such accounts within the Trust Fund as he determines necessary, including, without limitation, a Program Account, an Administrative Account and an Endowment Account.
4. The Administrative Account must be used for the deposit and disbursement of money to administer and market the Nevada College Savings Program...

Contractors Were Directed to Hold State Funds

On August 23, 2001, the State Board of Examiners approved a contract with Strong Capital Management, Inc., and Strong Investments, Inc., to provide investment, distribution, administration, and professional services for the Nevada College Savings Program. In addition to its own 529 Plan, Strong offered plans through American Skandia, and USAA. The contract called for the State to receive annual program fees of .15% of all assets, and various account-based fees.

The first Program fees earned by the State under this contract were deposited into the State Treasury on January 25, 2002. During the 4 years the Program operated under the Strong Plan, the State earned a total of \$463,134 in Program fees. Of this amount, the Plan Advisor was paid \$154,378 directly from state funds held by Strong, in accordance with the state's contract. The remaining portion of the state's fees totaling \$308,756 was deposited to the Program's Administrative Budget Account in the State's Accounting System.

In addition to earned Program fees, the contract provided for fixed marketing and administrative support from Strong and its investment managers. Strong made available \$300,000 in fiscal year 2002; \$450,000 in fiscal year 2003; and \$250,000 in both fiscal years 2004 and 2005. When these funds became available for use, officials within the State Treasurer's Office requested Strong to pay state Program expenses using these funds.

In a January 4, 2002, letter from the State Treasurer's Office, Strong was directed to pay \$141,000 of the funds directly to the Plan Advisor for payment of Program development costs. The letter also directed Strong to apply \$30,000 of the funds to repay an advance to the State from Strong. Finally, the letter indicated that Strong had already paid \$15,000 on behalf of the Program to the State of Illinois for a license fee so Nevada could use its television ads. In addition, according to discussions with Program officials, an advertising firm under contract with the State at the time was paid \$47,475 by Strong from these funds. None of these transactions were processed through the State's Accounting System. Therefore, of the \$300,000 marketing and administrative support commitment in fiscal year 2002, only \$66,525 was deposited in the State Treasury.

During the course of the Strong contract, available records indicate the State received a total of \$1,420,139 in marketing and administrative support. Of this amount, we determined the total deposited in the State Treasury was \$590,306. The remaining \$829,833 was used to pay Program expenses directly by Strong, at the direction of the State Treasurer's Office. The State ended its relationship with Strong in fiscal year 2005 due to sanctions imposed against Strong related to the market-timing trade scandal. The following exhibit shows the disposition of the funds available from Strong for marketing and administrative support.

**Nevada College Savings Program
Disposition of Marketing and Administrative Support Funds
From Strong Capital Management, Inc.
Fiscal Years 2002 – 2005**

Funds Available	Fiscal Year				Totals
	2002	2003⁽¹⁾	2004	2005	
Marketing and Administrative Support Payments	\$300,000	\$450,000	\$250,000	\$250,000	\$ 1,250,000
Reimbursement of Legal Expenses			169,520		169,520
Interest Earned on Escrow Account				619	619
Total Funds Available	300,000	450,000	419,520	250,619	1,420,139
Expenses Paid Outside State System					
Plan Advisor Expenses	141,000	59,000			200,000
Loan Repayment	30,000				30,000
Licensing Fee	15,000				15,000
Advertising and Marketing	47,475	1,465	39,362	113,997	202,299
Legal Expenses		180,063	202,471		382,534
Total Expenses Paid Outside State System	233,475	240,528	241,833	113,997	829,833
Funds Available for Deposit in State Treasury	66,525	209,472	177,687	136,622	590,306
Less: Amount Held for Future Use	-	102,951	10,427	(113,378)	-
Amount Deposited in State Treasury	\$ 66,525	\$106,521	\$167,260	\$250,000	\$ 590,306

Source: State Treasurer's Office records, State's Accounting System, contractor records, and contracts.

⁽¹⁾ Fiscal year 2003 includes support totaling \$200,000 available from USAA Funds through the contract with Strong.

State Funds Held in Program Manager Bank Account

Effective March 12, 2002, the State contracted with Upromise Investments, Inc. (UII), and Upromise, Inc., to provide program management and investment services under the Upromise College Fund 529 Plan. Later in 2002, UII began its strategic partnership with the Vanguard Group, Inc., to offer an additional option, the Vanguard 529 College Savings Plan. The State began earning asset-based fees in November 2002 and started receiving payments in February 2003 for these plans.

On April 2, 2003, Program officials in the State Treasurer's Office notified the Program Manager via e-mail that they were not to transmit any future fees to the State. They requested the state portion of the fees be held until they provided a request for the funds. State Program officials further indicated that due to the state budget process, they needed to determine how this process would be established for the future. The

notification included a reference to NRS 353B.360 and quoted the statute, which states:⁵

The State Treasurer may accept and expend on behalf of the Trust Fund money provided by private entities for direct expenses or marketing. Such money is not a part of the Trust Fund.

Although NRS 353B.360 allows the State Treasurer to accept and spend money provided by private entities, the justification for holding fees outside the state system mentioned in this e-mail is flawed for two reasons. First, the e-mail requested the Program Manager to withhold state earned fees. These fees are not monies provided by private entities as defined in NRS 353B.360. They are earned revenues from Program activities which must be deposited in the Nevada College Savings Trust Fund, pursuant to NRS 353B.340. Second, private money provided by entities is still required to be deposited in the State Treasury, pursuant to Section 353B.710 of the Nevada Administrative Code (NAC), which states:

If the State Treasurer, pursuant to NRS 353B.360, accepts on behalf of the Nevada College Savings Trust Fund money provided by private entities for direct expenses or marketing, the State Treasurer will account for the money separately in the State Treasury. The State Treasurer will expend the money from time to time for direct expenses or marketing activities related to the Program, including expenses of educational programs in this State that encourage saving for college as part of an overall approach to financial planning.

Furthermore, even though this money may be accepted by the State Treasurer, it may not be spent, except as budgeted by the Legislature, pursuant to the provisions of the State Budget Act.

Beginning with the fees earned in March 2003, the Program Manager held fees earned by the State under the Vanguard 529 Plan as requested.⁶ Asset-based fees earned on other 529 plans administered through the Program Manager were remitted to the State and deposited to the Program's Administrative Account in the State Treasury. These funds were used to pay Program expenses such as payroll, employee travel, and a portion of the advertising and marketing costs through the State's Accounting System.

⁵ See Appendix B for complete text of NRS Chapter 353B related to the Nevada College Savings Program.

⁶ The state's contract with the Program Manager required that fees be paid to such account as directed by the State.

In addition, the Program Manager continued to pay 1/3 of the state's fee earnings to the Plan Advisor pursuant to the state's contract for plan advisory services.

This fee distribution arrangement between the State and the Program Manager continued until December 2006. Between March 2003 and December 2006, the state earned \$3.3 million of asset-based fees. Of this amount, \$3.2 million was held by the Program Manager. Pursuant to state contracts, the Program Manager paid a total of \$1.1 million of these funds to the Plan Advisor. Of the remaining funds, more than \$1.2 million was used in paying Program expenses outside the State's Accounting System. The funds were placed into a bank account maintained by the Program Manager. Then, at the direction of officials in the State Treasurer's Office, the funds were disbursed from the account by the Program Manager to pay state Program expenses outside of the State's Accounting System.

The funds were held in a non-interest bearing account maintained by the Program Manager. This account was set up to receive transfers from the Investment Manager for the asset-based fees earned by the State and the Program Manager for the Vanguard Plan. However, the State Treasurer's Office did not ensure adequate accountability or control over these funds. Although bank statements and other activity reports were provided to Program officials, we found no evidence this information was used to verify account activity or reconcile the account balance. In addition, State Treasurer's Office staff did not keep an adequate record of account activity or how much state money should be in the account. On several occasions, State Treasurer's Office personnel had to ask the Program Manager how much state money was in the account so they could determine how much was available to pay various contractors. Because state Program funds were held in the same account as the Program Manager's money, accountability was reduced.

During the period that this arrangement was in effect, a total of \$2.1 million was held in the Program Manager's bank account. Of this amount, more than \$1.2 million was directed to state contractors pursuant to instructions from the State Treasurer's Office. Furthermore, since these funds were in a non-interest bearing account, the Program did not receive any earnings on the money while it remained outside of the State Treasury. We estimate the State could have earned more than \$38,000 if the

funds held by the Program Manager had been earning interest. The remaining balance of nearly \$877,000 was transmitted for deposit in the State Treasury in December 2006.

Other Program Funds Held Outside the State Treasury

We also found other instances where state funds were held outside of the State Treasury. Two of these instances, amounting to over \$1 million are discussed in detail below.

The first instance involved the state's portion of the annual \$15 account fee assessed on USAA College Savings Plan accounts. In December 2005, State Treasurer's Office officials received notice that the State had earned \$447,870 for the 2005 annual account fees. They requested the Program Manager to wire transfer \$149,290 to the Plan Advisor for their 1/3 share of the state fees. The remaining portion of the fees totaled \$298,580. On December 12, 2005, State Treasurer's Office officials requested the Program Manager remit the \$298,580 balance to the law firm representing the Nevada College Savings Program for legal fees. This transaction was not processed or recorded in the State Treasury or the State's Accounting System.

The second instance involved payments to the State for marketing and administrative support from the Program Manager totaling \$900,000. On September 13, 2005, the contract between the State and the Program Manager was amended (Amendment #1). As part of the contract amendment, the Program Manager agreed to pay the State a fixed program fee totaling \$200,000 each year and a supplemental fee of \$100,000 each year. Per the terms of the contract, these payments were to support marketing and administration of Nevada's 529 programs.⁷ The contract amendment states in part:

2. Fixed Program Fee. A cash payment of \$200,000 per year from UII as a program fee to support marketing and administration of Nevada's 529 programs, inclusive of prepaid tuition and college savings programs, will be paid in semi-annual installments for the remaining term of the contract, beginning with one single payment of \$200,000 for the year 2004 thirty days following execution of this Amendment, and the first installment for 2005 of \$100,000 payable June 30, 2005, with all subsequent installment payments due each December 31 and June 30 thereafter for the term of the contract.

⁷ Amendment #1 to the contract with the Program Manager did not specifically designate the supplemental fee be used for marketing and administrative support. However, the Legislative Counsel in response to our question concluded that both the fixed program fee and the supplemental fee are considered money provided by a private entity for direct expenses and marketing pursuant to NRS 353B.360. See Appendix J for the complete legal opinion issued by the Legislative Counsel.

3. Supplemental Fee. A cash payment of \$100,000 per year from UII as a supplemental program fee will be paid in semi-annual installments for the term of the contract beginning with one single payment of \$100,000 for the year 2004 thirty days following execution of this Amendment and the first installment of \$50,000 for the year 2005 payable June 30, 2005, and all other installment payments due on December 31 and June 30 thereafter for the term of the contract.

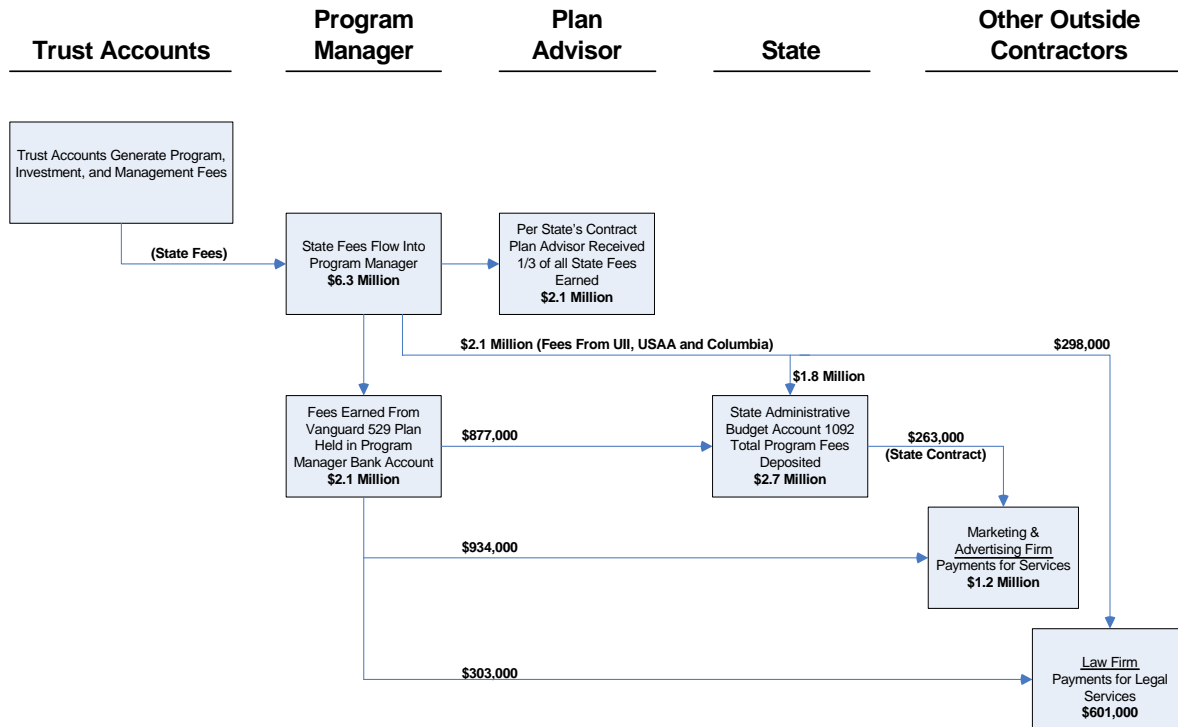
On October 13, 2005, Program officials in the State Treasurer's Office requested the Program Manager to process the 2004 and 2005 payments. They directed that \$200,000 be sent to the Plan Advisor, and \$400,000 be sent to the marketing firm under contract with the State, for payment of expenses. Therefore, instead of being deposited in the State Treasury, these funds were used to make payments directly from the Program Manager to the state's contractors.

The second payment totaling \$300,000 was made on December 28, 2006. Per instructions from officials in the State Treasurer's Office, the Program Manager sent \$100,000 to the Plan Advisor and \$200,000 to the State. The State's portion was deposited in the State Treasury for credit to the Program's Administrative Budget Account. Although NRS 353B.360 and NAC 353B.710 require this money be deposited in the State Treasury, they also require it be accounted for separately from Trust Fund money. Of the \$900,000 in payments for marketing and administrative support pursuant to contract amendment #1, \$700,000 was spent outside the state system, and \$200,000 was deposited in the State Treasury. However, none of this money was accounted for in a separate budget account as required by state laws and regulations.

Disposition and Flow of Funds Maintained Outside State System

The following exhibits demonstrate the disposition and flow of the payments made to the various contractors involved in the Program. Exhibit 7 shows the state Program fees earned on Trust accounts, and how those fees were used to pay Program expenses outside the state system.

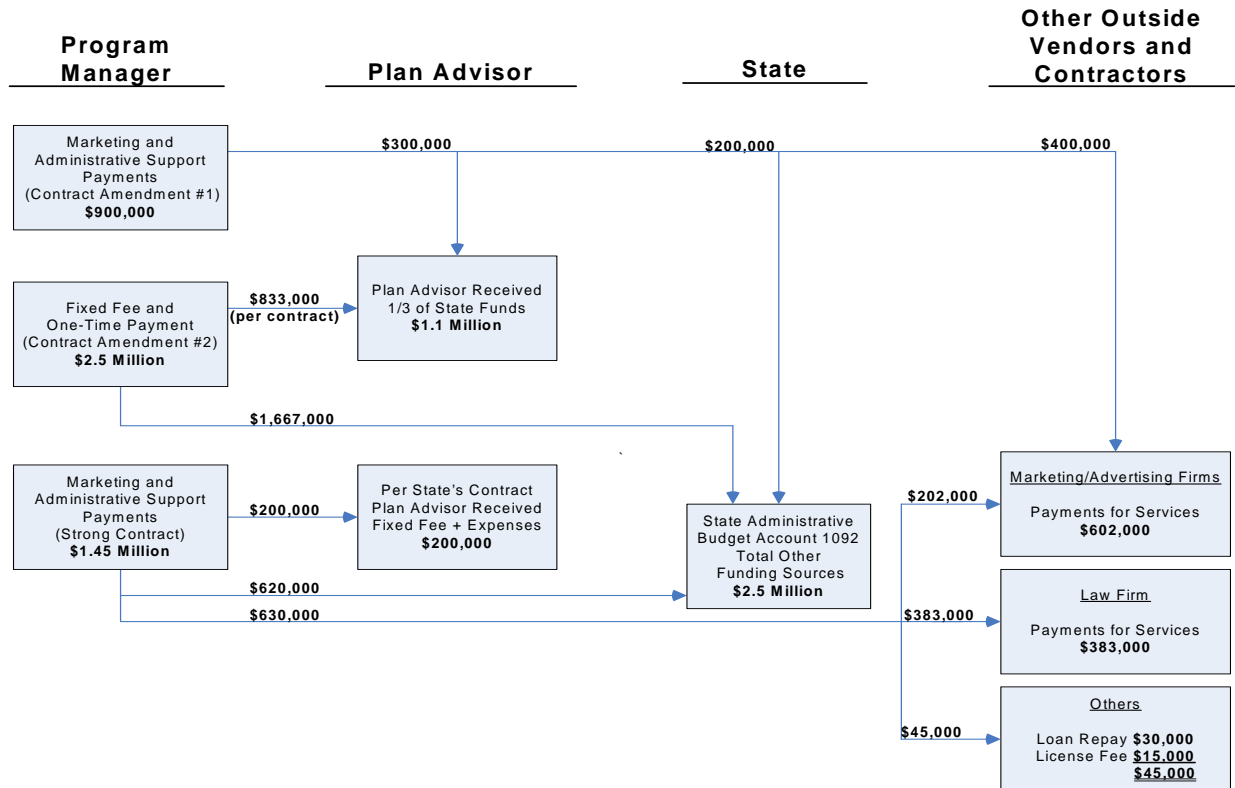
**Nevada College Savings Program
State Fees Earned
Disposition of Funds
Fiscal Years 2002 – 2007**



Source: State Treasurer's Office records, State's Accounting System, contractor records, and contracts.

Exhibit 8 shows the various other sources of funding received by the Program and how those funds were used to pay Program expenses.

**Nevada College Savings Program
Other Funding Sources
Disposition of Funds
Fiscal Years 2002 – 2007**



Source: State Treasurer's Office records, State's Accounting System, contractor records, and contracts.

Expenses Paid Outside of State's Accounting System Bypass Budget Process

During the 5½-year period the Program has been in operation, the Legislature approved total expenditures of \$1.6 million. However, more than \$7 million of Program expenses have been incurred during that time. Because most of these expenses were paid outside of the state system, the budgetary controls normally associated with state expenditures have been bypassed. As a result, administrative and marketing expenses for the Program have exceeded the legislatively approved budget each year the Program has been in operation.

Program Expenses Paid Directly From State Funds Held by Program Manager

We determined that more than \$6 million was paid for Program expenses from funds held outside the State Treasury. Of this amount, more than \$3.4 million was paid

directly by program managers to the state’s Plan Advisor. The remaining \$2.6 million was paid for Program expenses outside of the State’s Accounting System as directed by officials within the State Treasurer’s Office. Exhibit 9 shows the total expenses processed outside of the State’s Accounting System during fiscal years 2002 to 2007.

Exhibit 9

**Nevada College Savings Program
Total Expenses Processed
Outside State’s Accounting System
Fiscal Years 2002 – 2007**

Description	Fiscal Year Ended June 30						Totals
	2002	2003	2004	2005	2006	2007 ⁽¹⁾	
Plan Advisory Services	\$143,715	\$99,254	\$216,164	\$474,989	\$966,886	\$1,552,495	\$3,453,503
Legal Services		180,063	202,471	100,000	502,367		\$984,901
Marketing & Advertising Services	47,475	1,465	39,362	461,389	986,705		\$1,536,396
Other Expenses	45,000						\$45,000
Total Expenses Processed Outside State's Accounting System	\$236,190	\$280,782	\$457,997	\$1,036,378	\$2,455,958	\$1,552,495	\$6,019,800

Source: State Treasurer’s Office records, State’s Accounting System, contractor records, and contracts.

⁽¹⁾ As of December 31, 2006.

Since these payments were not processed through the State’s Accounting System, or disbursed from the State Treasury, they were never charged against the Program’s legislatively approved budget. If the State Treasurer’s Office had processed these transactions through the State’s Accounting System, revisions to the Program’s Administrative Budget Account would have been required.

Pursuant to the provisions of the State Budget Act, these work program revisions would have required approval of the State Budget Director and the Legislature’s Interim Finance Committee. Relevant sections of NRS 353.215 and 353.220 from the State Budget Act are presented below.

NRS 353.215

1. Not later than June 1 of each year the Governor shall require the head of each department, institution and agency of the Executive Department of the State Government to submit to him through the Chief a work program for the ensuing fiscal year. Such program shall:

(a) Include all appropriations or other funds from any source whatever made available to the department, institution or agency for its operation and maintenance and for the acquisition of property...

4. All expenditures to be made from the appropriations or other funds from any source whatever shall be made on the basis of such allotments and not otherwise, and shall be broken down into such classifications as the Chief may require.

NRS 353.220

5. If a request for the revision of a work program requires additional approval as provided in subsection 4 and...

(c) Does not qualify pursuant to paragraph (a) or (b), it must be submitted to the Interim Finance Committee. The Interim Finance Committee has 45 days after the request is submitted to its Secretary within which to consider the revision. Any request which is not considered within the 45-day period shall be deemed approved.

If the work program revisions had been approved in accordance with these statutory provisions, the State Treasurer's Office would have had budget authority to process these expenditures through the State's Accounting System. This would have allowed all of the Program funding to be processed through the State Treasury, and all Program expenses could have been charged against legislatively approved budgets. Since work program revisions were not requested, the expenses paid outside the State's Accounting System bypassed the budget established by the Legislature.

The total expenditures processed through the state system amounted to just over \$1 million since the program began. Exhibit 10 shows the Program expenditures recorded in the Administrative Budget Account in the State's Accounting System for each year of operation.

Exhibit 10

**Nevada College Savings Program
Expenses Recorded in Administrative Budget Account
Fiscal Years 2002 – 2007**

Expenditure Category	Fiscal Year Ended June 30						Totals
	2002	2003	2004	2005	2006	2007 ⁽¹⁾	
Personnel Services	\$59,369	\$98,301	\$106,619	\$108,386	\$118,560	\$57,834	\$549,069
Out-of-State Travel	1,128	2,434	2,433	577	4,291	3,183	14,046
In-State Travel	2,732	4,303	4,200	2,920	4,200	2,401	20,756
Operating	21,000	34,465	85,764	86,877	84,333	2,787	315,226
Cost Allocations and Assessments					9,526	3,618	13,144
Transfers					125,000		125,000
Information Services	1,469	234	373	595	1,819	306	4,796
Total Expenses Recorded in B/A 1092	\$85,698	\$139,737	\$199,389	\$199,355	\$347,729	\$70,129	\$1,042,037

Source: State's Accounting System.

⁽¹⁾ As of December 31, 2006.

The total expenses incurred by the Program exceeded \$7 million as of December 31, 2006. Exhibit 11 shows the Program expenses paid outside the State's Accounting System in addition to those processed through the Administrative Budget Account (1092).

Exhibit 11

**Nevada College Savings Program
Total Program Expenses
Fiscal Years 2002 – 2007**

	Fiscal Year Ended June 30						Totals
	2002	2003	2004	2005	2006	2007 ⁽¹⁾	
Total Expenses Processed Outside State's Accounting System	\$236,190	\$280,782	\$457,997	\$1,036,378	\$2,455,958	\$1,552,495	\$6,019,800
Expenses Recorded in B/A 1092	85,698	139,737	199,389	199,355	347,729	70,129	1,042,037
Total Program Expenses Incurred	\$321,888	\$420,519	\$657,386	\$1,235,733	\$2,803,687	\$1,622,624	\$7,061,837

Source: State Treasurer's Office records, State's Accounting System, contractor records, and contracts.

⁽¹⁾ As of December 31, 2006.

The total budgeted expenditures authorized and approved by the Legislature since the Program began in 2001 amounted to \$1.6 million. Since expenses incurred totaled more than \$7 million, the legislatively approved budgets were exceeded by more than \$5 million. Exhibit 12 shows Program expenses paid in excess of the legislatively approved budget for each year of operation.

**Nevada College Savings Program
Total Expenses in Excess of
Legislatively Approved Budget
Fiscal Years 2002 – 2007**

	Fiscal Year Ended June 30						Totals
	2002	2003	2004	2005	2006	2007 ⁽¹⁾	
Total Budgeted Expenditures in B/A 1092 ⁽²⁾	\$103,025	\$140,972	\$294,838	\$298,854	\$353,865	\$393,713	\$1,585,267
Total Program Expenses Incurred	321,888	420,519	657,386	1,235,733	2,803,687	1,622,624	7,061,837
Total Expenses in Excess of Budget	(\$218,863)	(\$279,547)	(\$362,548)	(\$936,879)	(\$2,449,822)	(\$1,228,911)	(\$5,476,570)

Source: State Treasurer's Office records, State's Accounting System, contractor records, and contracts.

⁽¹⁾ As of December 31, 2006.

⁽²⁾ Excludes Category 86, which requires legislative approval before obligating funds.

Contract Amendment Changes Fee Structure

At the Board of Trustees meeting on November 17, 2006, the Board approved a contract amendment with its Program Manager which restructured the economics of the Program (Amendment #2). This amendment, which was approved by the Board of Examiners on December 28, 2006, made a number of changes to the Program to keep Nevada's Program competitive with other states.

First, it changed the fee structure for future payments. The parties agreed that the State would no longer receive asset-based fees on the Vanguard or Upromise plans. Instead, the State agreed to accept annual payments of \$1.5 million, indexed to inflation on the Vanguard Plan.⁸ In addition, the Program Manager agreed to a one-time payment to the State of \$1 million. The amendment also indicated the Program Manager would no longer provide the State with the annual \$200,000 fixed program fee or the annual \$100,000 supplemental fee.

Second, the amendment changed the distribution of the Program fees earned by the State on the USAA and Columbia College Savings Plans. Prior to the amendment, the State paid 1/3 of its Program fees to the Plan Advisor. Under this amendment, those fees are to be paid to the Program Manager instead of the Plan Advisor. The Board also agreed to close out by December 15, 2006, any and all contractual obligations to its Plan Advisor. As of April 2007, the Board had not yet amended its contract with the Plan Advisor.

⁸ Per the agreement between the Program Manager and the Investment Manager, this payment is funded by the two parties equally.

Third, the amendment contained language indicating all future money payable to the State would be paid to the Board for deposit into the Administrative Account in the Nevada College Savings Trust Fund. It further indicated that no funds would be expended by the Program Manager on behalf of the Board for marketing or administration except funds appropriated in the state budget. Prior to the November 17, 2006, Board of Trustees meeting, Board minutes did not reflect any discussion of how the Program Manager was to handle the retention or remittance of program fees earned by the State. Furthermore, information presented to the Board and minutes of Board meetings contained no indication that the Board had ever been informed of how the marketing and administrative support payments were being handled.

In connection with this amendment, the Program Manager forwarded all remaining funds being held in its checking account. On December 22, 2006, the State received nearly \$877,000 from the Program Manager. These funds were deposited in the State Treasury to the credit of the Program's Administrative Account. All payments referenced in the amendment were made and recorded on December 29, 2006.

Financial Activity Not Accounted for in the Trust Fund

The recordkeeping for participant money is performed by the program management firm under contract with the State, and by the firms holding the underlying Trust assets. Although participant money was properly handled and accounted for by those firms, it was not accounted for in the Nevada College Savings Trust Fund, as required by state law. In addition, the portion of the administrative activity recorded in the State's Accounting System was accounted for in the State's General Fund, not the Trust Fund as required by statute. As a result, the Program is not operated as a distinct fiscal and accounting entity with a self-balancing set of accounts as required by the State Accounting Procedures Law. In addition, it lacks a functioning accounting system to record, classify, summarize, and report the financial activities of the Trust Fund. Consequently, periodic financial statements for the Trust Fund have not been produced to provide the Board, stakeholders and others with information needed to evaluate and oversee the Program.

Legislature Created Trust Fund to Account for Program Activity

The financial transactions of the Nevada College Savings Program have not been accounted for in the Trust Fund established by the Legislature when the Program was created. Although the Trust Fund was initially set up in the State's Accounting System, it was removed by the State Controller's Office at the end of fiscal year 2002. As a result, the accounting for the Program's administrative activity was transferred to a budget account within the state's General Fund. In addition, the financial activity of the Trust, including \$3.3 billion of participants' money and program management and investment management fees, is not accounted for in the Trust Fund. Although the Trust assets of each plan are properly recorded and accounted for by the firms outside of the state system, there has not been a complete financial reporting of the Trust activity.

When the Legislature created the Nevada College Savings Program in 2001, it created a trust fund to be administered by the State Treasurer. NRS 353B.340 and NRS 353B.350 require the Trust Fund be used to account for the Program's financial transactions. The statutes also established the following accounts within the Fund: the Program Account for the receipt, investment, and disbursement of participant money; the Administrative Account for the deposit and disbursement of money to administer and market the Program; and, the Endowment Account for the deposit of other Trust Fund money. Relevant sections of NRS 353B.340 and 353B.350 are shown below.⁹

⁹ See Appendix B for a complete text of NRS Chapter 353B related to the Nevada College Savings Program.

NRS 353B.340

1. The Nevada College Savings Trust Fund is hereby created.
2. The Trust Fund is an instrumentality of this state, and its property and income are exempt from all taxation by this state and any political subdivision thereof.
3. The Trust Fund consists of:
 - (a) All legislative appropriations made thereto;
 - (b) All money acquired by or for the use of the Trust Fund from:
 - (1) Any other governmental source, including, without limitation, any grant from the Federal Government, or a state or local government; or
 - (2) Any private source, including, without limitation, any gift, bequest, devise or endowment;
 - (c) All money deposited in accordance with savings trust agreements; and
 - (d) All earnings on the money in the Trust Fund.

NRS 353B.350

1. The Trust Fund must be administered by the State Treasurer.
2. The State Treasurer shall establish such accounts within the Trust Fund as he determines necessary, including, without limitation, a Program Account, an Administrative Account and an Endowment Account.
3. The Program Account must be used for the receipt, investment and disbursement of money pursuant to savings trust agreements.
4. The Administrative Account must be used for the deposit and disbursement of money to administer and market the Nevada College Savings Program and to supplement the administration and marketing of the Nevada Higher Education Prepaid Tuition Program set forth in NRS 353B.010 to 353B.190, inclusive.
5. The Endowment Account must be used for the deposit of any money received by the Trust Fund that is not received pursuant to a savings trust agreement and, in the determination of the State Treasurer, is not necessary for the use of the Administrative Account. The money in the Endowment Account may be expended for any purpose related to the Nevada College Savings Program or otherwise to assist the residents of this state to attain postsecondary education.

The only account established in the State's Accounting System is the Administrative Account; however, this account is in the State General Fund, not the Nevada College Savings Trust Fund as required by law. Furthermore, the Program Account has never been established in the State's Accounting System to account for participant money. Finally, the Endowment Account has never been established. Therefore, despite the framework established by the Legislature to account for Program activity in the Trust Fund, it has not been used. Instead, the financial activity of the Program has been accounted for as separate units by various parties involved with the Program. However, this fragmented approach does not provide the level of accountability needed by the State Treasurer to properly administer the Trust Fund or the Board to properly oversee the financial activity of the Program.

Trust Fund Removed From State's Accounting System

When the Program first began in 2001, the State Treasurer's Office requested a budget revision to provide authority to pay Program expenses from the State Treasurer's Administrative Account.¹⁰ This revision was approved by the Legislature's Interim Finance Committee on September 25, 2001. Two weeks later, the budget authority was transferred to the newly created Nevada College Savings Trust Fund (Fund 605 – Budget Account 1092). The remarks contained on the work program document to execute the transfer indicated the State Treasurer's Office intended all of the financial activity of the Program be accounted for in the Trust Fund. The work program document, approved by the state Budget Division on October 9, 2001, included the following remarks prepared by State Treasurer's Office officials:

Pursuant to AB 554, we are required to establish a new budget account to record all revenues and expenditures associated with the Nevada College Savings Trust program. For that reason, this work program requests the establishment of agency 051 and budget account 1092 for the Nevada College Savings Trust. Controller's Office already created fund 605 for this program, and according to them, agency 051 and budget account 1092 is available to use for the Nevada College Savings Trust.

All revenues and expenditures associated with this program, including the ASO IV position approved by IFC on September 25, 2001 will be recorded in this budget account. The expenses associated with the approved ASO IV position are the only expenditures we anticipate this year. We would like to set up revenue general ledgers for administration fees and charges, and the Savings Trust Agreement deposits, even though we expect the only revenue we will receive this year will be reimbursements of expenses from Strong Capital Management, Inc.

During fiscal year 2002, revenues totaling \$102,749 and expenditures totaling \$85,698 were recorded in the Administrative Budget Account within the Trust Fund. Other transactions, such as deposits of participant money, investment earnings, and fees and expenses deducted from accounts were not recorded in the Trust Fund.

At the end of fiscal year 2002, officials in the Office of the State Controller decided that the Program should not be accounted for or reported in the Nevada College Savings Trust Fund. The State Controller's Office made this determination because officials believed the State did not administer the Program, but acted only as a

¹⁰ See Appendix C for detailed schedule of Administrative Budget Account activity.

promoter. Therefore, they felt the activity should be accounted for in a budget account in the State General Fund, not in the Trust Fund. Consequently, the Trust Fund was removed from the State's Accounting System, and Budget Account 1092 was placed in the State General Fund, starting with fiscal year 2003.

State Finances Must Be Accounted for in a Fund

The State Accounting Procedures Law prescribes various requirements for the state's finances and accounting. Among these is a requirement that all financial transactions of the State be accounted for within a fund. A fund is a separate fiscal, and accounting entity with a self-balancing set of accounts to record cash and other financial resources, together with related liabilities, and its revenues and expenses. Excerpts of key sections of the State Accounting Procedures Law are shown below.

NRS 353.293

1. It is the purpose of the State Accounting Procedures Law to set forth legislative policy governing the State's financial procedures which relate to accounting and reporting, and to establish a system of accounting for the State that:

- (a) Presents fairly and with full disclosure the financial position and the results of financial operations of the funds and account groups of the State in conformity with generally accepted accounting principles; and**
- (b) Determines and demonstrates compliance with legal and contractual requirements related to finance.**

2. The Legislature reserves the sole right to establish funds and account groups not provided for by the Nevada Constitution.

NRS 353.305

"Fund" means a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated to carry on specific activities or attain certain objectives in accordance with special regulations, restrictions or limitations.

NRS 353.321

2. All resources and financial transactions of the State Government must be accounted for within a fund. The State Controller shall assign each existing fund which is created by statute to the proper category necessary to present the annual financial statements in conformity with generally accepted accounting principles, notwithstanding any statutory designation to the contrary.

NRS 353.323

5. Fiduciary funds must be used to account for assets held by the State in trust or as an agent of any person, governmental agency, political subdivision or other fund. Each trust fund must be classified for accounting purposes as a governmental fund or a proprietary fund.

Most Program Activity Not Recorded in State's Accounting System

Most Program activity has not been recorded in the State's Accounting System. Only \$5.2 million of the \$11.2 million in state revenues and just over \$1 million of the \$7 million in Program expenses have been reported. The remainder of the Program's administrative activity was processed by others outside the State's Accounting System; therefore, these transactions were not reported. Furthermore, each plan in the Program is accounted for and reported on separately; but, this information is not aggregated for a complete financial reporting of the Trust activity. Financial information such as program and management fees paid from participant accounts, investment earnings on Trust assets, and Trust account balances are not aggregated for financial statement presentation purposes. For instance, Trust assets totaled nearly \$3.3 billion as of December 31, 2006; however, this information is not presented for financial statement reporting purposes.

Accounting systems rest on a framework of principles to identify, record, classify, summarize, and report the financial transactions of an entity. The State's Accounting System is designed to record and report all monies received and disbursed by state agencies. This is accomplished through the timely recording of deposits and disbursements within an accounting structure that adheres to the state's legal and budgetary requirements. NRS 353.2965 defines what an accounting system is and how it is to be used. NRS 353.2965 states:

“Accounting system” means the total structure of records and procedures which discover, record, classify, summarize and report information on the financial position and results of operations of the State's funds, account groups and organizational components.

In addition, state officers are to provide the information necessary for the State Controller to report the financial position and results of operations of the State's funds. This enables the financial activity of all funds to be presented in the State's CAFR prepared by the State Controller. The State Controller's Office has published a detailed accounting procedures manual to assist agencies in accounting for the State's financial transactions.

Financial Statements Not Prepared or Presented to the Board

The State Treasurer's Office has not prepared financial statements for the Trust Fund since the Program began. Although three of the four plans under the Nevada Program had annual audits, we found no evidence they were presented to the Board of Trustees. These audits provide assurance that participant money is being properly recorded, safeguarded, and accounted for within each plan. However, they do not present a consolidated financial statement of the entire Trust, or the Program. Furthermore, the Program Manager provides State Treasurer's Office officials with a weekly summary of plan activity; however, it does not include the level of detail needed to prepare entries to the State's Accounting System. And, it does not include any detailed information on one of the plans. The Program Manager indicated detailed information is available if requested.

The Board of Trustees does not receive periodic financial statements or other reports showing the combined financial activity of the Trust or of the Program. On three occasions, the Program Manager made a presentation to the Board of Trustees. These presentations included financial and account activity of the respective plans; however, they did not provide summary information about fees charged to participant accounts, or present financial information on a consolidated basis. When financial statements are prepared, Program officials can demonstrate accountability for the Trust or Program financial activities. The Board of Trustees, the Legislature, and other stakeholders would have complete financial information needed to properly oversee and evaluate Program operations.

We surveyed eight other states with college savings plans to determine their financial reporting methods. Based on the results of our surveys, all eight states prepare annual financial statements for their programs and have them audited. In addition, six of the eight states present this information in their Comprehensive Annual Financial Report (CAFR).

Recommendations

1. Deposit all fees earned and other funds received by the Program in the State Treasury.

2. Process all Program expenditures through the State's Accounting System and record to budget accounts authorized by the Legislature.
3. Work with the State Controller to re-establish the Trust Fund.
4. Account for applicable Program activity in the Trust Fund.
5. Request the Program Manager to provide detailed information needed to record Program activity in the State's Accounting System.
6. Prepare annual financial statements for the Nevada College Savings Trust Fund, and present them to the Board of Trustees.

Contract Requirements Not Followed

The State Treasurer's Office and the Board of Trustees did not always follow statutory and other requirements when contracting for services to operate the Program. Specifically, we noted some contracts were not properly approved and payments exceeded contract amounts. In addition, contractor billings were not submitted timely and did not always provide sufficient detail to determine the appropriateness of charges. Finally, Program officials in the State Treasurer's Office did not provide adequate oversight of contractors to ensure key Program information was provided to the Board. Since the Program is largely operated by contractors, the State Treasurer's Office must establish better control procedures to help ensure contract requirements are followed.

Legal Services Contract Did Not Comply With Requirements

Payments for legal services were not always in compliance with various statutory and other requirements. Since inception of the Nevada College Savings Program, a law firm has been paid nearly \$985,000 for Program services.¹¹ Program officials told us the services were covered under contracts between the law firm and the State

¹¹ Based on review of law firm billings, we estimate about \$54,000 of this amount was for services performed for the Prepaid Tuition Program.

Treasurer's Office. However, these contracts were not signed or approved by the Board of Trustees as required by state law, nor was the Board a party to the contracts. In addition, for the first year's services, the hourly rates paid to the law firm exceeded the contract rate. Finally, despite contractual requirements to submit billings monthly, the period covered by contractor billings was as long as 21 months.

State Treasurer's Office Had Series of Contracts for Legal Services

The State Treasurer's Office contracted with a law firm for several years for legal services related to the issuance of bonds. The first contract was effective from September 7, 2000, to June 30, 2002. This contract related to the State Treasurer's responsibility to issue obligations of the State. However, the contract also had a provision which stipulated that any state agency could utilize the law firm for other legal services needed, at \$225 per hour. The contract states in part:

CONSIDERATION. Fees for Bond Counsel services shall be contingent upon the successful issuance of State securities & the standard rate for these services shall range from \$25,000 for up to \$10,000,000 in bonds; to \$45,000 for up to \$100,000,000 in bonds; from \$55,000 for up to \$200,000,000 in bonds and \$65,000 for up to \$300,000,000 in bonds. This fee will include all related costs and expenses (except direct out of pocket expenses for such things as phone, copying, and delivery charges and travel as approved by the State), including but not limited to overhead and support staff. The Treasurer, prior to services being rendered, must agree upon additional fees resulting from multiple series or increased complexity within an issue.

Should the services of Orrick, Herrington, & Sutcliffe personnel be utilized for issues not related to a securities issue, or utilized by a separate State of Nevada agency other than the Office of the Treasurer, the hourly rate will be \$225 as referenced in Attachment C.

The State Treasurer's Office had similar contracts with the law firm for bond disclosure services that covered services from July 1, 2002, to December 31, 2006. Although the contract that ended June 30, 2002, included a provision for legal services to be provided to other state agencies, the subsequent contracts did not.

Contracts for Legal Services Were Not Approved by the Board of Trustees

For legal services since inception of the Program, the law firm has been paid nearly \$985,000 under contracts with the State Treasurer's Office. However, the Board of Trustees has not signed or approved any of the contracts for legal services provided to the Program. In addition, the Board has never been a party to any of the contracts. NRS 353B.370 requires the Board of Trustees to enter into contracts for services

provided to the Program. Furthermore, NRS 333.337 requires contracts be in writing and be signed by each party to the contract. Without being a party to the contract, the Board could be limited in its ability to direct, oversee, and monitor the services being provided.

Although the Board of Trustees did not have a written contract for legal services, it designated a firm (Orrick, Herrington, & Sutcliffe, LLP) to be outside counsel for the Program at a meeting in July 2001. At that meeting, a Board member asked whether the Chairman was going to enter into a contract with the law firm or utilize an existing contract. The Board Chairman indicated the existing contract would probably be amended, including a different set of fees, and brought to a future Board of Examiners meeting for approval. A member of the Board made a motion to designate the law firm as counsel for the Program and it was unanimously approved. However, the existing contract for bond counsel services was never amended and the Board of Trustees did not sign or approve contracts for legal services provided in subsequent years.

Hourly Rates Charged for Legal Services Exceeded Contract Rate

The composite hourly rate paid for services during the term of the contract ended June 30, 2002, was \$428.64. This is significantly higher than the \$225 specified in the contract. Consequently, the law firm was paid nearly \$96,000 in excess of the contract rate. Exhibit 13 provides detail on the rate charged for legal services provided during fiscal year 2002.¹²

Exhibit 13

**Nevada College Savings Program
Legal Expense Charges
Fiscal Year 2002**

	<u>Billings</u>			<u>Rate Per Contract</u>	<u>Rate in Excess of Contract</u>	<u>Payments in Excess of Contract Rate</u>
	<u>Total</u>	<u>Hours</u>	<u>Rate⁽¹⁾</u>			
Invoice #1	\$180,063	419.50	\$429.23	\$225.00	\$204.23	\$85,674
Invoice #2	21,718	51.25	423.77	225.00	198.77	10,187
Totals	\$201,781	470.75	\$428.64	\$225.00	\$203.64	\$95,861

Source: Auditor analysis of law firm billings provided by State Treasurer's Office.

Note: Amounts shown for invoice #2 include only services provided through June 30, 2002.

⁽¹⁾ Composite hourly rates calculated by auditors. Totals reflect variances due to rounding.

¹² See Appendix I for a summary of legal services provided.

Billings for Legal Services Were Not Submitted Timely

The billings provided by the law firm were not submitted to the State Treasurer’s Office on a timely basis. The average time covered by billings was over 1 year. At Program inception, the law firm agreed to accrue fees until funds were available to pay the charges. This resulted in the State determining when billings would be requested. Program officials in the State Treasurer’s Office stated they did not require the law firm to submit billings more timely since the Program often did not have the funds to pay the bill. Based on our analysis, it appears the Program had sufficient funds in fiscal year 2004 to pay the contractor when services were provided. However, Program officials did not request monthly billings. For example, two billings submitted in fiscal year 2006 each covered 21 months. Exhibit 14 shows the detail on these two billings.

Exhibit 14

**Nevada College Savings Program
Legal Billings
Time Period Covered**

Billing Date	Dates of Services	Time Period Covered	Amount Billed
12/13/2005	11/08/2002 to 08/18/2004	21 months	\$298,580.00
05/16/2006	04/01/2004 to 01/10/2006	21 months	\$203,786.75

Source: Auditor analysis of law firm billings provided by State Treasurer’s Office.

State administrative policies, which were incorporated into the contract, require monthly billings for professional services where compensation is not a fixed amount. Without monthly billings, it is difficult for Program personnel to effectively review the appropriateness of charges when so much time has passed since the services were provided.

Payments to Plan Advisor Did Not Adhere to Contract Terms

The State Treasurer’s Office made payments to the Plan Advisor of about \$500,000 which were not properly supported or did not adhere to the terms of the contract. First, the contractor was paid \$200,000 for initial program development services, including \$141,000 for reimbursement of expenses. However, the contractor was paid without sufficient documentation to support the out-of-pocket expenses. Second, the Plan Advisor was paid \$300,000 from monies the State received for marketing and administrative support from the Program Manager. Since this was not

money earned on asset-based or account-based fees, the State was not contractually obligated to make these payments.

Inadequate Documentation to Support Payments

The State Treasurer’s Office paid its Plan Advisor \$141,000 from Program funds for reimbursement of expenses without sufficient documentation. Although the contractor submitted an invoice, it lacked detail to support the out-of-pocket expenses. State administrative policy requires monthly statements itemize all expenses when contracts provide for reimbursement of expenses. Moreover, state policies require agencies to maintain documentation justifying all expenditures.

In August 2001, shortly after legislation passed to establish the Program, the Board of Trustees contracted with a firm for plan advisory services related to the Program. The scope of services included initial program development services establishing the framework for program design, assisting with enabling legislation, and preliminary search for financial institutions qualified to provide the necessary services for implementing the Program. For this initial work, the contract provided for a fee of \$70,000 plus reimbursement for direct expenses.

The Plan Advisor was paid \$200,000 for initial program development services. The payments were made directly from the Program Manager in two installments. One payment was for \$141,000 in January 2002 as reimbursement for out-of-pocket expenses and the other for \$59,000 in November 2002. However, the only documentation available was a fax from the Plan Advisor with the following information:

Nevada College Savings Program Out of Pocket Expenses as of 8/23/01	
<u>Paid</u>	
Legal Fees	\$ 25,669.53
Consulting Fees	80,000.00
Travel & Meals	32,041.76
FedEx/Shipping	765.68
Telephone	597.99
College Savings Books	1,146.24
Misc.	741.61
	<u>\$140,962.81</u>

Source: Faxed invoice sent to State Treasurer’s Office from Plan Advisor.

Program officials indicated no other documentation or details to support the legal and consulting fees or travel costs was provided and they did not request it. The Plan Advisor told us they no longer have records of specific expenses, and they waived the remaining \$11,000 of the development fee as an accommodation to the State. Without adequate detail for the expenses, there is a risk the Program paid more than it was required to under the contract.

Payments Not in Accordance with Contract Terms

The State Treasurer's Office officials directed payments totaling \$300,000 to the Plan Advisor because they believed the state's contract required them to do so. In addition to the 1/3 share of Program fees earned by the State, the Plan Advisor received \$200,000 in October 2005 and \$100,000 in December 2006. These two payments represented 1/3 of the marketing and administrative support funds payable to the State under the state's contract with the Program Manager (Amendment #1). However, the state's contract with the Plan Advisor entitled them to 1/3 of asset-based and account-based fees earned by the State. The funds payable to the State under Amendment #1 with the Program Manager were for marketing and administrative support, not asset-based or account-based fees. Therefore, the State was not contractually obligated to make these payments to the Plan Advisor.

Marketing Contract Not Properly Approved and Maximums Were Exceeded

The State Treasurer's Office contract with a vendor to provide marketing services was not evaluated or approved by the Board of Trustees, as required by state law. At the Board meeting on May 29, 2002, Board members were told that Program officials had mailed requests for proposals to various firms. At the next Board meeting on August 30, 2002, the Chairman informed Board members the contract had been awarded to the Rose/Glenn Group. However, since this contract was not an agenda item for this meeting, Board approval was not obtained. Although the Board never evaluated the proposals, there was documentation indicating staff had evaluated proposals.

We also noted two instances where contract amendments were not properly approved. The Board of Trustees approved Amendment #1 to the contract on August 25, 2003. However, the amendment became effective on July 8, 2003 – nearly

7 weeks prior to the Board's approval. This amendment extended the original contract by 2 years. Amendment #2 became effective on September 7, 2005. This amendment extended the contract another year, but was not approved by the Board of Trustees.

In addition, the State Treasurer's Office made payments to the contractor in excess of the maximum allowed under the contract for fiscal years 2005 and 2006. Payments made through the State's Accounting System and from state funds held by the Program Manager totaled \$2.1 million from fiscal years 2003 through 2006. Exhibit 15 provides detail on the amounts paid to the marketing firm compared to the contract maximums.¹³

Exhibit 15

**Nevada College Savings Program
Comparison of Marketing Expenditures to Contract Maximums
Fiscal Years 2003 – 2006**

Fiscal Year	Paid Through State's Accounting System		Payments From State Funds Held by Program Managers	Total Payments	Contract ⁽¹⁾ Maximum	Exceeds Contract Maximum
	B/A 1092 Amount	B/A 1081 Amount				
2003	\$ 29,826	\$273,445	\$ -	\$ 303,271	\$370,000	\$ -
2004	80,752	20,281	39,362	140,395	185,000	-
2005	82,500	92,477	461,389	636,366	185,000	451,366
2006	70,000	7,000	986,705	1,063,705	185,000	878,705
Totals	\$263,078	\$393,203	\$1,487,456	\$2,143,737		\$1,330,071

Source: State's Accounting System and records from the contractor.

⁽¹⁾ The contract provided for services for both the College Savings Program (B/A 1092) and the Prepaid Tuition Program (B/A 1081).

State officials involved with the Program at the time indicated they believed payments from the Program Manager to the marketing firm were from the Program Manager's funds, not the state's funds being held by the Program Manager. They believed the payments from the Program Manager (UII) to the marketing firm were being made pursuant to a provision in the state's contract with UII. The contract with UII, effective March 12, 2002, states in part:

UII shall submit to the Board, in writing, a proposed marketing plan . . . (the "Nevada Marketing Plan"). . . The Nevada Marketing Plan . . . will set forth an annual marketing budget incorporating both marketing efforts by UII and marketing of the Upromise Service in the State. During the first twelve months, UII, Upromise and its Contributing Companies will provide an aggregate of at least \$700,000 in value of marketing related to the Direct Program and the Upromise

¹³ See Appendix H for a summary of invoices for advertising and marketing services.

Service in the State and annually thereafter an aggregate of at least \$500,000 in value.

Based on our audit work, payments made to the marketing firm by the program managers were from state funds. We conclude this for three reasons. First, the payments were made at the direction of Program officials in the State Treasurer's Office, either through e-mails or letters. The communications from the State Treasurer's Office included specific instructions that payments were to be from state funds being held by the Program Manager and Plan Advisor. Second, communications from the Program Manager to the State Treasurer's Office indicate they made the payments to the marketing firm from state funds. Third, the UII contract provision mentioned by former Program officials was deleted from the contract by Amendment #1 that was effective September 13, 2005. Therefore, payments made after that date could not have been related to the above provision.

Oversight of Contractors Was Inadequate

Program officials in the State Treasurer's Office did not provide adequate oversight of contractors to ensure key Program information was provided to the Board. This included audited financial statements for each of the four plans that make up the Trust. Other information not regularly provided to the Board included reports on: investment performance; performance measures related to customer service; proposed marketing plans and budgets from the Program Manager; and comparisons between the Nevada College Savings Program and other states' programs. The State Treasurer's Office had little documentation that contractors had provided such information or of follow-up efforts to request the information.

The State Treasurer's Office and the Board contract for most of the services needed to administer the Program. This includes plan advisory services, program management, marketing, and legal services. The contracts have various provisions requiring information be provided to assist the Board in fulfilling its oversight role.

Audited Financial Statements Not Provided

Under the contract with the Program Manager, audited financial statements are to be prepared for three of the Plans. The audits provide assurance that all of the monies held on behalf of the participants are properly accounted for and safeguarded.

State Treasurer's Office Program officials provided us with only one year's financial statements for one of the four Plans. In addition, based on our review of Board minutes and the information provided to Board members, the Board was never provided with any of the audited financial statements for the four plans in the Nevada College Savings Program. Although the Program Manager was able to provide us with all of the audited financial statements for the plans that are audited, this information needs to be provided to the Board.

Other Key Program Information Not Provided

Program officials in the State Treasurer's Office did not provide other key information to the Board about the performance of its contractors. The contract with the Program Manager required them to provide annual reports disclosing the investment results achieved by the Trust and by each portfolio during the prior year. It also required the Program Manager to provide operational performance measurement reports to the Board. The measures related to customer service, such as average time for answering telephone calls, responding to e-mails and written correspondence, and mailing statements to participants. Program officials in the State Treasurer's Office did not have any documentation to show they received this information required under the contract. Nor did we see evidence that this information was provided in Board meeting minutes and meeting packets. The Program Manager indicated this information was available upon request of the Board or Program officials.

The Board was also not provided with information about the Program Manager's marketing efforts as required under the contract. The contract included the following requirements:

- UII shall submit to the Board, in writing, a proposed marketing plan for the Program prior to its start (in October 2002) and at least annually thereafter, which shall set forth an outline of proposed marketing and promotional activities targeted to potential participants.
- The Marketing Plan will set forth an annual marketing budget incorporating both marketing efforts by UII and marketing of the Upromise service in the State.

Based on our review of Board of Trustees minutes and Board meeting packets, a proposed marketing plan for the Program Manager was provided to the Board in May 2002. An update to the plan was also provided to the Board at the March 2005 meeting. Neither of the marketing plans provided to the Board included an annual

marketing budget as required under the contract. Although an amendment to the contract effective in September 2005 removed the requirement to include an annual budget in the marketing plan, there was no evidence this requirement was ever complied with. Program Manager officials indicated to us that information required under the contract was generally only provided upon request of the Board or its staff. The Program Manager provided us with examples of information they had prepared, but had never been requested to provide.

Another contract with the Plan Advisor required the contractor to perform various tasks related to ensuring the Program was competitive with other states' programs. The contract specifically included such items as:

- conducting an annual peer review of no less than three comparable state college savings plans;
- surveying account holders that transacted rollovers into and out of the Nevada plan to monitor competitiveness with other state plans;
- conducting an annual review of the Program Manager and product distributor/investment providers, such review to include performance of responsibilities and compliance with program regulations and contract provisions; and,
- meeting annually with college savings and prepaid tuition plan rating services so as to assist the State to attain and/or maintain the highest practical program ratings.

Program officials in the State Treasurer's Office had documentation that this information was provided to the Board at only one meeting (March 2006). Although the contractor provided us with information indicating the work had been performed on other occasions, there was no evidence it was presented at a Board meeting.

The lack of information was the result of inadequate controls to monitor contractors. Since a significant amount of the Program operations are performed by contractors, the State Treasurer's Office needs to better monitor contractors to ensure key information is provided to the Board.

Recommendations

7. Ensure the Board of Trustees evaluates proposals and enters into contracts for all services as required by state law.
8. Review billings to ensure contractors are paid in accordance with contract rates.

9. Require contractors for professional services to submit bills monthly after services are provided.
10. Ensure contractors submit documentation to support expenses reimbursable under contracts.
11. Monitor payments to contractors to ensure contract terms are complied with.
12. Establish control procedures to ensure key information about Program operations required in vendor contracts is provided to the Board.

No Formal Accounting or Internal Control Procedures

The State Treasurer's Office has not established accounting or internal control procedures to help guide staff in carrying out their responsibilities for the Nevada College Savings Program. The lack of written control procedures contributed to many of the problems found during our audit. Although the State Treasurer's Office had developed policies and procedures for other activities performed by the Office, it had not developed any related to the Program. These policies and procedures would help the State Treasurer's Office officials and staff to better safeguard and account for Program resources.

Accountability for Public Resources

Internal controls are an integral component of an organization's management and include the plans, methods, and procedures used in meeting an agency's mission, goals, and objectives. Legislators, government officials, and the public want to know whether, (1) government resources are managed properly and in compliance with laws and regulations, (2) government programs are achieving their objectives and desired outcomes, and (3) government services are being provided efficiently, economically, and effectively. Managers of these programs are accountable to the Legislature and public. Officials of public programs are entrusted with handling public resources. This responsibility includes:

- applying resources effectively and for the purpose for which the resources were furnished;

- complying with applicable laws and regulations, including identifying the requirements with which the entity and the officials must comply, and implementing systems designed to achieve that compliance;
- establishing and maintaining effective internal controls;
- providing appropriate reports to those who oversee their actions and to the public;
- following sound procurement practices when contracting for services, including ensuring procedures are in place for monitoring contract performance.

Internal Control Standards issued by the U.S. Government Accountability Office provides examples of control activities as shown below.

Proper Execution of Transactions and Events – Transactions and other significant events should be authorized and executed only by persons acting within the scope of their authority. This is the principal means of assuring that only valid transactions to exchange, transfer, use, or commit resources and other events are initiated or entered into.

Accurate and Timely Recording of Transactions and Events – Transactions should be promptly recorded to maintain their relevance and value to management in controlling operations and making decisions. This applies to the entire process or life cycle of a transaction or event from the initiation and authorization through its final classification in summary records. In addition, control activities help to ensure that all transactions are completely and accurately recorded.

Appropriate Documentation of Transactions and Internal Control – Internal control and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination. The documentation should appear in management directives, administrative policies, or operating manuals and may be in paper or electronic form. All documentation and records should be properly managed and maintained.

State Requirements for Internal Controls

NRS Chapter 353A.020 prescribes requirements for state agencies to develop internal controls. In addition, NRS 353A.025 requires periodic review and reporting of agencies' internal controls. Relevant sections of NRS 353A.020 and 353A.025 are shown below.

NRS 353A.020

1. The Director, in consultation with the Committee and Legislative Auditor, shall adopt a uniform system of internal accounting and administrative control for agencies. The elements of the system must include, without limitation:
 - (a) A plan of organization which provides for a segregation of duties appropriate to safeguard the assets of the agency;
 - (b) A plan which limits access to assets of the agency to persons who need the assets to perform their assigned duties;
 - (c) Procedures for authorizations and recordkeeping which effectively control accounting of assets, liabilities, revenues and expenses;
 - (d) A system of practices to be followed in the performance of the duties and functions of each agency; and
 - (e) An effective system of internal review....
3. Each agency shall develop written procedures to carry out the system of internal accounting and administrative control adopted pursuant to this section.

NRS 353A.025

1. The head of each agency shall periodically review the agency's system of internal accounting and administrative control to determine whether it is in compliance with the uniform system of internal accounting and administrative control for agencies adopted pursuant to subsection 1 of NRS 353A.020.
2. On or before July 1 of each even-numbered year, the head of each agency shall report to the Director whether the agency's system of internal accounting and administrative control is in compliance with the uniform system adopted pursuant to subsection 1 of NRS 353A.020. The reports must be made available for inspection by the members of the Legislature.

The State Treasurer's Office reviewed its system of internal accounting and administrative control and reported on the results pursuant to NRS 353A.025. We reviewed the reports prepared since the Program began. These reports were for reviews conducted in 2002, 2004, and 2006, and included Program activities such as contracts, revenues, and expenditures. Even though the Program was included in these reviews, no significant internal control weaknesses were noted.

In addition to NRS Chapter 353A, the State Administrative Manual and the State Division of Internal Audits provide detailed guidance for developing and documenting internal controls systems. Furthermore, the State Controller's Office has published a detailed accounting procedures manual to assist agencies in accounting for the state's financial transactions.

Recommendation

13. Develop detailed accounting and internal control procedures for the Nevada College Savings Program.

Appendices

Appendix A Audit Methodology

To gain an understanding of the Nevada College Savings Program, we interviewed current and former officials at the State Treasurer's Office, Legislative Fiscal Division staff, and personnel of the contractors providing services to the Program. We also reviewed state and federal laws, state regulations, and policies and procedures significant to Program operations. In addition, we reviewed financial information, budgets, and minutes of various legislative committees since inception of the Program. We also reviewed the history of the authorizing legislation (AB 554, 2001 Session) as introduced, amended, and enrolled. We then reviewed information describing college savings plans in general, as well as Nevada's Program and its four plans. We also attended a Board of Trustees meeting and contacted Board members to discuss any concerns they had about the Program. In addition, we obtained data on the number of participants and assets held in each state's college savings plan in the country. Finally, we requested available Program information from current officials in the State Treasurer's Office, program managers, investment managers, and other contractors associated with the Program.

We analyzed the Nevada College Savings Trust Budget Account and the Prepaid Tuition Budget Account for fiscal years 2002 through 2007 as of December 31, 2006. We compared the budgets as they were requested by the agency, recommended by the Governor, and approved by the Legislature. We reviewed each work program and, where applicable, verified it received proper Interim Finance Committee approval. Finally, we compared the final budgeted revenues and expenditures with actual amounts for unusual variances. We also reviewed minutes of the State Board of Examiners meetings from September 7, 2000, to December 28, 2006.

To determine whether the financial activities of the Nevada College Savings Trust Fund were properly accounted for, we requested the State Treasurer's Office provide all accounting records related to program activity. We also interviewed

personnel at the State Controller's Office and Budget Division about how the accounting for the Program in the State's Accounting System has been carried out. In addition, we interviewed personnel from eight other states that utilize the same Program Manager as Nevada. Our discussions included how the college savings plans' financial activities are accounted for, whether the activities are accounted for in their states' accounting system, whether financial statements are prepared for the program, and if the financial statements are included in the states' comprehensive annual financial reports.

Since most of the financial activity of the Program is accounted for outside the State's Accounting System, we compiled financial information from available records. To determine sources of funding we gathered and analyzed available documentation related to the program. This included State Treasurer's Office records, Board minutes, contracts, records of firms providing program management, investment management, and plan advisory services. For each revenue transaction, we determined if fees were calculated in accordance with the terms of contracts and whether they were properly accounted for. To determine whether the program fees earned by the State were accurately calculated, we obtained weekly plan activity summaries for each of the four current plans, from the Program Manager, detailing the value of assets and number of accounts held in each plan. Using plan program descriptions, contracts and other pertinent documentation, we determined the basis for calculation of the state fees for each plan. Finally, we recalculated the state earned fees for the Vanguard, Upromise, USAA, and Columbia plans, compared the fees to the amounts earned, and evaluated significant differences.

To determine Program expenses, we analyzed available records from the State Treasurer's Office, Program Managers, and the Plan Advisor. We also obtained records from firms providing legal and marketing services to the Program. We then analyzed payments for advertising and marketing services provided between October 2002 and September 2006, by reviewing sales journals and billing summaries detailing charges. We also identified the invoices paid with State funds using records and available information provided by contractors and the State Treasurer's Office. Our procedures included reviewing selected invoices to determine whether the invoices were addressed and sent to the State Treasurer's Office, approved for payment by

State Treasurer's Office officials, and whether payments were from budgeted state funds or from state funds held by contractors on behalf of the State. We reviewed payments made by the Program Manager from State funds held on the State's behalf. We also reviewed documentation supporting the expenditure of State funds held by the Plan Advisor. Finally, we reconciled total known funding sources to the total identified payments made for Program expenses.

To determine whether Program participants' money was being properly accounted for and safeguarded, we obtained participants' account information as of December 31, 2006. We then compared the value of participants' assets to the year-end plan statements issued by the investment managers, certain custodial bank statements, and the information reported weekly by the Program Manager to the State Treasurer's Office. We also compared asset balances in the audited financial statements for the Vanguard, Upromise, and USAA plans to amounts reported by the Program Manager. Furthermore, we reviewed the amount of expenses that should have been recorded in the Trust Fund Program Account for state, program management, and investment management fees. To accomplish this, we obtained records from the Program Manager, investment managers, State Treasurer's Office, and the State's system. Information related to program and investment management fees under the plans administered by Strong Capital Management, Inc., and Columbia Management Group, LLC, was not available.

To determine whether the operations of the Program were conducted in accordance with applicable laws, regulations, and contractual obligations, we reviewed all contracts for services entered into by the State for the Program since inception. We then determined whether the Board of Trustees and the State Treasurer's Office complied with state laws and regulations governing contracts. This included determining whether contracts and amendments were approved by the Board of Trustees and the Board of Examiners. We then determined whether required solicitations were obtained for service contracts and proposals were evaluated by the Board of Trustees at a public meeting. We determined if invoices and payments for legal and other services complied with state laws, regulations, policies, and contract terms. Specifically, for legal contracts, we determined if invoices were billed regularly

and timely, and contained information required by the contract terms. We also determined if the composite rates charged complied with the contractual rates. We also compared payments to amounts billed and summarized legal billings into general categories of services. For other contracts, we determined if payments complied with contract terms, and whether they were adequately supported and documented. Further, we determined if cumulative payments for services were within the maximums authorized under the contracts. Finally, we analyzed U.S. Code § 529 to identify the requirements for a qualified 529 plan and evaluated the State's compliance with those requirements.

We also determined whether contractors performed key contract provisions. These provisions included submitting audited financial statements; reporting on investment performance; providing performance measures related to customer service; submitting proposed marketing plans and budgets for the Program Manager; and comparing the competitiveness of Nevada's Program to other states. This was done by interviewing Program officials and requesting documentation showing the provisions were complied with. We also reviewed all minutes and meeting packets for all Board of Trustees meetings held between February 27, 2001, and November 17, 2006, for evidence the required information had been submitted to the Board, and when necessary, listened to audio recordings of Board meetings. Finally, we obtained documentation directly from contractors to determine if contract provisions had been complied with.

We also requested the Legislative Counsel to provide a legal opinion on how the provisions of Program revenues, expenses, assets, and other financial transactions relate to requirements of NRS Chapter 353B, the State Budget Act, the State Accounting Procedures Law; and the Authorization Act. In addition, we requested the Legislative Counsel to provide a legal opinion as to whether contracts for legal services and for marketing services met the requirements of NRS 353B.370 or other state laws, and whether payments made pursuant to marketing contracts exceeded the maximum specified in the contracts.

Because of the varying forms and location of information provided to us during our audit, we did not evaluate the control systems used to create or prepare much of

this information. Furthermore, because of the lack of a central accounting system or uniform records to account for the financial transactions of the Program, the controls normally associated with state finances and accounting were not in effect. Because some information used in accomplishing our audit objectives was not subject to audit tests normally associated with establishing the validity and reliability of data, such information may not have been complete or consistent with other information obtained during the course of our audit. However, we believe this limitation does not significantly affect the information presented in our audit report, or affect our audit conclusions. In addition, other transactions or events may have occurred which we were not made aware of during the course of our audit. To the extent these issues may exist, the conclusions stated in our audit could be affected.

Our audit work was conducted in March and April 2007 in accordance with generally accepted government auditing standards.

In accordance with NRS 218.821, we furnished a copy of our preliminary report to the State Treasurer. On May 10, 2007, we met with agency officials to discuss the results of our audit and requested a written response to the preliminary report. That response is contained in Appendix K which begins on page 75.

Contributors to this report included:

Daniel L. Crossman, CPA
Deputy Legislative Auditor

Kimberly C. Arnett, CPA
Deputy Legislative Auditor

Gary J. Kulikowski, CPA
Deputy Legislative Auditor

Jill A. Silva, CPA
Deputy Legislative Auditor

Richard A. Neil, CPA
Audit Supervisor

Stephen M. Wood, CPA
Chief Deputy Legislative Auditor

Appendix B
Relevant Sections of
Nevada Revised Statutes Chapter 353B

NRS 353B.005 Board of Trustees: Creation; membership; terms; Chairman; compensation.

1. There is hereby created a Board of Trustees of the College Savings Plans of Nevada.
2. The Board consists of five members composed of:
 - (a) The State Treasurer, who may name a designee to serve on the Board on his behalf.
 - (b) The Director of the Department of Administration, who may name a designee to serve on the Board on his behalf.
 - (c) The Chancellor of the System, who may name a designee to serve on the Board on his behalf.
 - (d) Two members appointed by the Governor. A member who is appointed by the Governor must possess knowledge, skill and experience in the field of:
 - (1) Accounting;
 - (2) Finance;
 - (3) Investment management; or
 - (4) Marketing.
3. A member of the Board who is appointed by the Governor:
 - (a) Serves for a term of 4 years;
 - (b) Except as otherwise provided in paragraph (c), may be reappointed by the Governor; and
 - (c) Except as otherwise provided in this paragraph, may serve for only two terms. A member who is appointed to fill a vacancy in an unexpired term that is not longer than 3 years may serve two terms in addition to the unexpired term.
4. The State Treasurer or his designee shall serve as the Chairman of the Board.
5. Each member of the Board serves without compensation, except that each member is entitled to receive
 - (a) The per diem allowance and travel expenses provided for state officers and employees generally; and
 - (b) Reimbursement for any other actual and reasonable expense incurred while performing his duties.
6. As used in this section, the term "College Savings Plans of Nevada" includes the Nevada Higher Education Prepaid Tuition Program set forth in NRS 353B.010 to 353B.190, inclusive, and the Nevada College Savings Program set forth in NRS 353B.300 to 353B.370, inclusive.

NRS 353B.310 Regulations.

1. The State Treasurer shall adopt regulations to establish and carry out the Nevada College Savings Program, which must comply with the requirements of a qualified state tuition program pursuant to 26 U.S.C. § 529.
2. The regulations must be consistent with the provisions of the Internal Revenue Code set forth in Title 26 of the United States Code, and the regulations adopted pursuant thereto, to ensure that the Nevada College Savings Program meets all criteria for federal tax-deferred or tax-exempt benefits, or both.
3. The regulations must provide for the use of savings trust agreements and savings trust accounts to apply distributions toward qualified higher education expenses at eligible educational institutions in accordance with 26 U.S.C. § 529.
4. The regulations may include any other provisions not inconsistent with federal law that the State Treasurer determines are necessary for the efficient and effective administration of the Nevada College Savings Program and the Trust Fund.

NRS 353B.320 Delegation by Board of administrative powers and duties to State Treasurer. The Board may delegate to the State Treasurer any of its administrative powers and duties specified in NRS 353B.300 to 353B.370, inclusive, if the Board determines that such delegation is necessary for the efficient and effective administration of the Nevada College Savings Program and the Trust Fund.

Appendix B
Relevant Sections of
Nevada Revised Statutes Chapter 353B
(continued)

NRS 353B.340 Creation; sources; limitations on use of money.

1. The Nevada College Savings Trust Fund is hereby created.
2. The Trust Fund is an instrumentality of this state, and its property and income are exempt from all taxation by this state and any political subdivision thereof.
3. The Trust Fund consists of:
 - (a) All legislative appropriations made thereto;
 - (b) All money acquired by or for the use of the Trust Fund from:
 - (1) Any other governmental source, including, without limitation, any grant from the Federal Government, or a state or local government; or
 - (2) Any private source, including, without limitation, any gift, bequest, devise or endowment;
 - (c) All money deposited in accordance with savings trust agreements; and
 - (d) All earnings on the money in the Trust Fund.
4. All money deposited in accordance with savings trust agreements and all earnings on such money:
 - (a) Are not the property of this state, and this state has no claim to or interest in such money; and
 - (b) Must not be commingled with money of this state.
5. A savings trust agreement or any other contract entered into by or on behalf of the Trust Fund does not constitute a debt or obligation of this state, and no account owner is entitled to any money in the Trust Fund except for that money on deposit in or accrued to his account.
6. The money in the Trust Fund must be preserved, invested and expended solely pursuant to and for the purposes authorized by NRS 353B.300 to 353B.370, inclusive, and must not be loaned or otherwise transferred or used by this state for any other purpose.

NRS 353B.350 Administration by State Treasurer; establishment of Program, Administrative and Endowment Accounts.

1. The Trust Fund must be administered by the State Treasurer.
2. The State Treasurer shall establish such accounts within the Trust Fund as he determines necessary, including, without limitation, a Program Account, an Administrative Account and an Endowment Account.
3. The Program Account must be used for the receipt, investment and disbursement of money pursuant to savings trust agreements.
4. The Administrative Account must be used for the deposit and disbursement of money to administer and market the Nevada College Savings Program and to supplement the administration and marketing of the Nevada Higher Education Prepaid Tuition Program set forth in NRS 353B.010 to 353B.190, inclusive.
5. The Endowment Account must be used for the deposit of any money received by the Trust Fund that is not received pursuant to a savings trust agreement and, in the determination of the State Treasurer, is not necessary for the use of the Administrative Account. The money in the Endowment Account may be expended for any purpose related to the Nevada College Savings Program or otherwise to assist the residents of this state to attain postsecondary education.

NRS 353B.360 Acceptance and expenditure of money provided by private entities for direct expenses and marketing of Fund. The State Treasurer may accept and expend on behalf of the Trust Fund money provided by private entities for direct expenses or marketing. Such money is not a part of the Trust Fund.

Appendix B
Relevant Sections of
Nevada Revised Statutes Chapter 353B
(continued)

NRS 353B.370 Duties and powers of Board; contracts for services.

1. The Board shall establish a comprehensive investment plan for the money in the Trust Fund.
2. Notwithstanding the provisions of any specific statute to the contrary, the Board may invest or cause to be invested any money in the Trust Fund, including, without limitation, the money in the Program Account, in any manner reasonable and appropriate to achieve the objectives of the Nevada College Savings Program, exercising the discretion and care of a prudent person in similar circumstances with similar objectives. The Board shall consider the risk, expected rate of return, term or maturity, diversification of total investments, liquidity and anticipated investments in and withdrawals from the Trust Fund.
3. The Board may establish criteria and select investment managers, mutual funds or other such entities to act as investment managers for the Nevada College Savings Program.
4. The Board may employ or contract with investment managers, evaluation services or other services as determined by the Board to be necessary for the effective and efficient operation of the Nevada College Savings Program.
5. The Board may employ personnel and contract for goods and services necessary for the effective and efficient operation of the Nevada College Savings Program.
6. The marketing plan and materials for the Nevada College Savings Program must be approved by the Board.
7. The Board may prescribe terms and conditions of savings trust agreements.
8. The Board may contract with one or more qualified entities for the day-to-day operations of the Nevada College Savings Program as the Program Administrator for the management of the marketing of the Program, the administration of the comprehensive investment plan and Trust Fund, the selection of investment managers for the Nevada College Savings Program and the performance of similar activities.
9. All contracts authorized by this section are subject to the requirements of chapter 333 of NRS, except that:
 - (a) Notwithstanding the provisions of subsection 1 of NRS 333.165 to the contrary, the Board shall contract for all services regardless of the estimated value of the services; and
 - (b) Notwithstanding the provisions of NRS 333.335 to the contrary, each proposal received by the Board concerning services must be evaluated by the Board at a public meeting and each contract for services must be awarded by the Board at a public meeting.

Appendix C
Nevada College Savings Trust
Administrative Budget Account
Budget to Actual Comparison
Fiscal Years 2002 – 2007

Fiscal Year	Fund - Budget Account	Budget			Final Approved Budget	Actual	Variance
		Agency Request	Governor Recommends	Legislature Approved			
2002	605 - 1092⁽¹⁾						
	Revenues	-	-	-	\$103,025	\$102,749	(\$276)
	Expenditures	-	-	-	(103,025)	(85,698)	17,327
	Carried Forward to Next Year				\$0	\$17,051	\$17,051
2003	101 - 1092						
	Carried Forward From Previous Year	-	-	-	\$17,051	\$17,051	\$0
	Revenues	-	-	-	173,766	170,145	(3,621)
	Expenditures	-	-	-	(140,972)	(139,737)	1,235
	Carried Forward to Next Year				\$49,845	\$47,459	(\$2,386)
2004	605 - 1092⁽²⁾						
	Carried Forward From Previous Year	\$3,000	\$3,000	\$0			
	Revenues	285,185	288,266	293,338			
	Expenditures	(285,185)	(288,266)	(293,338)			
	Carried Forward to Next Year	\$3,000	\$3,000	\$0			
	101 - 1092						
	Carried Forward From Previous Year				\$47,459	\$47,459	\$0
	Revenues				399,838	389,997	(9,841)
	Expenditures				(294,838)	(199,389)	95,449
	Carried Forward to Next Year				\$152,459	\$238,067	\$85,608
2005	605 - 1092⁽²⁾						
	Carried Forward From Previous Year	\$3,000	\$3,000	\$0			
	Revenues	285,959	288,782	293,854			
	Expenditures	(285,959)	(288,782)	(293,854)			
	Carried Forward to Next Year	\$3,000	\$3,000	\$0			
	101 - 1092						
	Carried Forward From Previous Year				\$238,067	\$238,067	\$0
	Revenues				673,854	669,802	(4,052)
	Expenditures				(298,854)	(199,355)	99,499
	Carried Forward to Next Year				\$613,067	\$708,514	\$95,447
2006	605 - 1092⁽²⁾						
	Carried Forward From Previous Year	\$238,067	\$238,067	\$238,067			
	Revenues	337,874	340,230	343,865			
	Expenditures	(337,874)	(340,230)	(343,865)			
	Carried Forward to Next Year	\$238,067	\$238,067	\$238,067			
	101 - 1092						
	Carried Forward From Previous Year				\$708,514	\$708,514	\$0
	Revenues				343,865	295,642	(48,223)
	Expenditures				(353,865)	(347,729)	6,136
	Carried Forward to Next Year				\$698,514	\$656,427	(\$42,087)
2007	605 - 1092⁽²⁾						
	Carried Forward From Previous Year	\$238,067	\$238,067	\$238,067			
	Revenues	385,661	390,165	393,713			
	Expenditures	(385,661)	(390,165)	(393,713)			
	Carried Forward to Next Year	\$238,067	\$238,067	\$238,067			
	101 - 1092⁽³⁾						
	Carried Forward From Previous Year				\$656,427	\$656,427	\$0
	Revenues				393,713	3,615,123	3,221,410
	Expenditures				(393,713)	(70,129)	323,584
	Carried Forward to Next Year				\$656,427	\$4,201,421	\$3,544,994

Source: Governor's Executive Budgets, Legislative Approved Budgets, Work Program Revisions, and State's Accounting System.

Note: Amounts shown as budgeted carry forwards represent the Reserve – Category 86.

⁽¹⁾ Original Work Program approved by IFC on September 25, 2001, was recorded in State Treasurer's Budget Account (101-1080). On October 9, 2001, this Work Program authority was transferred to the newly established Nevada College Savings Trust Budget Account (Fund 605—B/A 1092).

⁽²⁾ Fund 605 – 1092 was reflected in the Governor's Executive Budget and Legislature Approved Budget documents. Actual activity was recorded in Fund 101 – 1092.

⁽³⁾ As of December 31, 2006.

Appendix D
College Savings Plan Information – by State
as of December 31, 2006

State	Total Number of Accounts	Value of Funds	Date of Inception
Virginia	1,412,600	\$20,026,266,569	1999
Rhode Island	480,121	7,605,000,128	1998
New Hampshire	504,836	6,736,132,947	1998
New York	487,253	6,250,005,960	1998
Ohio	673,910	5,041,935,558	2000
Maine	178,486	4,537,165,266	1999
Nevada	321,043	3,284,290,350	2001
Alaska	249,575	2,650,887,686	1991
Massachusetts	129,208	2,349,719,180	1999
Colorado	186,106	2,292,964,181	1997
California	170,663	2,243,604,166	1999
Illinois	151,612	2,193,102,915	2000
Wisconsin	222,395	1,933,169,560	1997
Utah	87,087	1,891,141,404	1996
New Mexico	163,884	1,749,168,487	2000
Iowa	139,482	1,733,641,182	1998
Nebraska	142,662	1,648,126,162	2001
Kansas	110,375	1,601,823,408	2000
Michigan	150,946	1,541,698,812	2001
New Jersey	163,385	1,517,123,834	1998
Maryland	99,209	1,219,596,882	2001
Missouri	89,302	1,028,006,548	1999
West Virginia	86,851	909,950,000	2002
Connecticut	54,330	820,879,647	1997
South Carolina	57,996	819,152,198	2002
Oregon	89,383	761,037,058	2001
South Dakota	45,768	614,053,169	2002
Alabama	57,894	579,949,793	2002
Minnesota	46,399	531,171,543	2001
Indiana	62,842	504,536,073	1997
Georgia	61,177	459,606,298	2002
Arizona	54,260	392,865,062	1999
Delaware	24,296	342,341,820	1998
North Dakota	18,415	319,964,253	2001
North Carolina	31,534	279,427,533	1998
Oklahoma	30,900	228,073,626	2000
Pennsylvania	15,458	213,090,468	2002
Texas	21,882	197,599,707	2002
Montana	15,406	172,612,517	1998
Arkansas	12,150	148,960,337	1999
Louisiana	27,166	131,920,258	1997
Florida	26,777	114,277,494	2002
Idaho	12,892	106,929,453	2001
Kentucky	11,905	89,113,068	1990
District of Columbia	8,088	81,727,193	2002
Mississippi	6,913	70,194,609	2001
Vermont	5,637	66,875,259	1999
Hawaii	3,373	38,548,893	2002
Tennessee	4,071	38,128,755	2000
Totals	7,207,903	\$90,107,557,269	

Source: College Savings Plan Network, National Association of State Treasurers, as of December 31, 2006.

Appendix E

Nevada College Savings Program Sources of Program Funding Fiscal Years 2002 – 2007

	Fiscal Year						Totals
	2002	2003	2004	2005	2006	2007 ⁽¹⁾	
Program Fees							
Asset-Based Program Fees							
Strong/American Skandia Plan	\$ 8,145	\$ 39,008	\$ 72,294	\$ 68,456	\$ -	\$ -	\$ 187,903
Upromise/Vanguard Plan		27,225	322,871	825,593	1,406,610	763,458	3,345,757
Upromise/Upromise Plan		4,412	50,173	156,688	320,813	211,978	744,064
Upromise/Columbia Plan		123	34,870	89,446	125,366	74,476	324,281
Total Asset-Based Earnings	8,145	70,768	480,208	1,140,183	1,852,789	1,049,912	4,602,005
Account-Based Program Fees							
Strong/American Skandia/USAA Plans		49,995	168,285	56,950			275,230
Upromise/USAA Plan				227,835	447,870	806,871	1,482,576
Total Account-Based Earnings	-	49,995	168,285	284,785	447,870	806,871	1,757,806
Fixed Program Fees							
Upromise/Vanguard Plan (Amendment #2)						1,500,000	1,500,000
Upromise/Upromise Plan (Amendment #2)						1,000,000	1,000,000
Total Fixed Program Fees	-	-	-	-	-	2,500,000	2,500,000
Marketing/Administrative Support							
Strong/American Skandia	300,000		250,000	250,000			1,050,000
Strong/USAA		200,000					200,000
Upromise (Amendment #1)					600,000	300,000	900,000
Total Marketing/Administrative Support	300,000	450,000	250,000	250,000	600,000	300,000	2,150,000
Total Fees and Support	308,145	570,763	898,493	1,674,968	2,900,659	4,656,783	11,009,811
Other Sources							
Loan Proceeds	30,000						30,000
Reimbursement of Legal Expenses			169,520				169,520
Interest Earned	794	2,460	3,547	12,354	26,163	7,102	52,420
Other			1,250			257	1,507
Total Other Sources	30,794	2,460	174,317	12,354	26,163	7,359	253,447
Total Sources of Program Funding	\$ 338,939	\$ 573,223	\$ 1,072,810	\$ 1,687,322	\$ 2,926,822	\$ 4,664,142	\$ 11,263,258

Source: State Treasurer's Office, State's Accounting System, contractor records, and contracts.

⁽¹⁾ As of December 31, 2006.

Appendix F
Nevada College Savings Program
Expenses Processed Outside
State's Accounting System
Fiscal Years 2002 – 2007

Entity Handling Funds on State's Behalf*	Recipient	Fiscal Year						
		2002	2003	2004	2005	2006	2007 ⁽¹⁾	2002-07
SII	G.I.F. Services, LLC.	\$141,000						
SII	State of Illinois	15,000						
SII	Strong Investments, Inc.	30,000						
SII	R&R Advertising	47,475						
SII	Orrick, Herrington & Sutcliffe, LLP.		\$180,063					
SII	G.I.F. Services, LLC.		59,000					
SII	R&R Advertising		1,465					
SII	Orrick, Herrington & Sutcliffe, LLP.			\$32,951				
SII/GIF	The Rose/Glenn Group			39,362				
SII	Orrick, Herrington & Sutcliffe, LLP.			169,520				
SII/GIF	The Rose/Glenn Group				\$113,997			
UII	Orrick, Herrington & Sutcliffe, LLP.				100,000			
UII	The Rose/Glenn Group				347,392			
UII	The Rose/Glenn Group					\$328,253		
UII	The Rose/Glenn Group					400,000		
UII	The Rose/Glenn Group					200,000		
UII	The Rose/Glenn Group					58,452		
UII	Orrick, Herrington & Sutcliffe, LLP.					298,580		
UII	Orrick, Herrington & Sutcliffe, LLP.					203,787		
Subtotals		233,475	240,528	241,833	561,389	1,489,072	–	2,766,297
UII	G.I.F. Services, LLC. earnings (per contract)	2,715	40,254	216,164	474,989	966,886	1,552,495	3,253,503
Total Expenses Paid Outside State's Accounting System		\$236,190	\$280,782	\$457,997	\$1,036,378	\$2,455,958	\$1,552,495	\$6,019,800

Source: State Treasurer's Office records, contractor records, contracts.

⁽¹⁾ As of December 31, 2006.

*SII = Strong Investments, Inc.

*SII/GIF = Strong Investments, Inc. /G.I.F. Services, LLC.

*UII = Upromise Investments, Inc.

Appendix G
Nevada College Savings Program
Plan Assets and Accounts Held
2002 – 2006

Plan	Calendar Year	Total Plan Assets	Plan Assets Held by Nevadans	Total Accounts Held⁽¹⁾	Accounts Held by Nevadans⁽¹⁾
The Vanguard 529 Plan	2002	\$ 9,489,613	\$ 183,072	656	8
	2003	322,641,240	4,086,760	21,583	293
	2004	857,189,807	11,390,782	47,729	629
	2005	1,489,345,927	19,608,927	73,773	937
	2006	\$2,385,018,654	\$27,748,287	98,788	1,255
Upromise College Fund	2002	\$ 2,494,370	\$ 56,142	3,266	25
	2003	49,161,071	713,267	39,173	408
	2004	154,317,033	5,212,723	88,113	1,468
	2005	319,664,636	9,808,619	125,960	2,231
	2006	\$ 473,285,436	\$13,936,215	148,945	2,694
USAA College Savings Plan	2004	\$ 112,903,229	\$ 1,082,693	18,367	202
	2005	196,325,253	2,071,224	32,406	376
	2006	\$ 314,924,109	\$ 3,763,473	47,930	585
Columbia 529 Plan⁽²⁾	2003	\$ 79,537,678	\$ -	2,633	-
	2004	86,033,042	-	6,893	-
	2005	86,997,610	-	7,848	-
	2006	\$ 111,062,151	\$ 1,344,613	8,348	89
All Plans	2002	\$ 11,983,983	\$ 239,214	3,922	33
	2003	451,339,989	4,800,027	63,389	701
	2004	1,210,443,111	17,686,198	161,102	2,299
	2005	2,092,333,426	31,488,770	239,987	3,544
	2006	\$3,284,290,350	\$46,792,588	304,011	4,623

Source: Upromise, Inc.

Note: Amounts shown do not reflect account activity for Strong Capital Management, Inc.

⁽¹⁾ Includes funded accounts only.

⁽²⁾ 2003, 2004, and 2005 information for Columbia 529 Plan was not available.

Appendix H
Nevada College Savings Program
Invoices for Advertising and Marketing Services
Fiscal Years 2003 – 2007

Month	Fiscal Year				
	2003	2004	2005	2006	2007
July	\$ -	\$ (444)	\$ 94,968	\$ 25,096	\$2,024
August	-	9,584	44,215	170,444	-
September	-	63,032	106,470	15,024	257
October	32,283	(42,795)	78,068	167,606	-
November	15,949	7,014	168,629	120,546	-
December	-	7,000	85,351	226,145	-
January	7,320	7,000	85,647	84,914	-
February	13,806	7,033	25,203	159,371	-
March	8,021	7,055	10,337	10,715	-
April	15,903	7,000	11,206	11,815	-
May	14,900	47,736	47,556	29,120	-
June	19,717	15,163	8,983	28,674	-
Total	\$127,899	\$134,378	\$766,633	\$1,049,470	\$2,281

Source: Auditor compilation of contractor invoices.

Note: The invoices in this schedule total \$63,077 less than the payments to the contractor in Exhibit 15. The contractor indicated the difference is due, in part, to its change in accounting systems and lack of readily available historical records.

Appendix I
Nevada College Savings Program
Summary of Legal Services Provided
Fiscal Years 2002 – 2006

No.	Dates of Service ⁽¹⁾		Consult and Meet with State Treasurer, Staff, and Board	General Research, Telephone Calls, and Correspondence	Program Participation and Disclosure Materials and Regulations ⁽²⁾	Contracts and Amendments ⁽³⁾	Program Account Conversions	Strong Mutual Fund Litigation and Trading Practices ⁽⁴⁾	Totals
1	7/12/01 - 5/14/02	Hours	31.50	20.50	250.50	117.00	-	-	419.50
		Rates	\$485.54	\$434.13	\$396.43	\$483.44	\$ -	\$ -	\$429.23
		Charges	\$15,294.51	\$8,899.61	\$99,306.45	\$56,562.43	\$ -	\$ -	\$180,063.00
2	5/9/02 - 8/26/02	Hours	7.75	14.35	55.75	-	1.25	-	79.10
		Rates	\$510.37	\$412.36	\$402.51	\$ -	\$510.37	\$ -	\$416.57
		Charges	\$3,955.37	\$5,917.33	\$22,440.00	\$ -	\$637.96	\$ -	\$32,950.66
3	10/21/03 - 3/31/04	Hours	-	-	-	-	-	352.75	352.75
		Rates	\$ -	\$ -	\$ -	\$ -	\$ -	\$480.57	\$480.57
		Charges	\$ -	\$ -	\$ -	\$ -	\$ -	\$169,520.00	\$169,520.00
4	7/30/02 - 9/2/03	Hours	11.25	1.70	207.00	16.00	-	-	235.95
		Rates	\$510.21	\$477.25	\$412.01	\$510.21	\$ -	\$ -	\$423.82
		Charges	\$5,739.86	\$811.33	\$85,285.45	\$8,163.36	\$ -	\$ -	\$100,000.00
5	11/8/02 - 8/18/04	Hours	114.25	81.15	341.05	62.00	26.20	-	624.65
		Rates	\$538.66	\$504.88	\$439.41	\$540.73	\$483.95	\$ -	\$478.00
		Charges	\$61,542.24	\$40,970.65	\$149,862.39	\$33,525.26	\$12,679.46	\$ -	\$298,580.00
6	4/1/04 - 1/10/06	Hours	48.75	11.25	286.00	13.25	45.50	-	404.75
		Rates	\$582.83	\$570.85	\$473.25	\$534.70	\$582.83	\$ -	\$503.49
		Charges	\$28,412.96	\$6,422.04	\$135,348.14	\$7,084.84	\$26,518.77	\$ -	\$203,786.75
Totals		Hours	213.50	128.95	1140.30	208.25	72.95	352.75	2116.70
		Rates	\$538.38	\$488.72	\$431.68	\$505.81	\$546.08	\$480.57	\$465.30
		Charges	\$114,944.94	\$63,020.96	\$492,242.43	\$105,335.89	\$39,836.19	\$169,520.00	\$984,900.41

Source: Auditor analysis of law firm billings provided by State Treasurer's Office. Composite hourly rates calculated by auditors.

Note: Billings included 104 hours of work performed specifically on Prepaid Tuition Program, totaling approximately \$54,000.

(1) Dates of service were taken from law firm billings. In some cases, dates of service overlap.

(2) Includes \$6,286.46 for work performed on securities and tax opinions.

(3) Contracts and amendments consist of work on the following:

	Hours	Rates	Charges
Strong Capital Management, Inc., and Strong Investments, Inc.	74.25	\$490.86	\$36,446.36
Upromise Inc., and Upromise Investments, Inc.	128.75	515.26	66,339.73
G.I.F. Services, LLC.	5.25	485.68	2,549.80
Total Contracts and Amendments	208.25	\$505.81	\$105,335.89

(4) Charges include \$583.75 in expenses.

Appendix J
Legislative Counsel Legal Opinion

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600

LEGISLATIVE COMMISSION (775) 684-6800
BARBARA E. BUCKLEY, *Assemblywoman, Chair*
Lorne J. Malkiewicz, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-8821
WILLIAM J. RAGGIO, *Senator, Chairman*
Gary L. Ghiggeri, *Fiscal Analyst*
Mark W. Stevens, *Fiscal Analyst*



LORNE J. MALKIEWICH, *Director*
(775) 684-6800

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830
PAUL V. TOWNSEND, *Legislative Auditor* (775) 684-6815
DONALD O. WILLIAMS, *Research Director* (775) 684-6825

May 4, 2007

Paul Townsend, Legislative Auditor
401 S. Carson St.
Carson City, NV 89701

Dear Paul:

You have asked this office 10 questions concerning the administration of the Nevada College Savings Program ("Program") by the State Treasurer. To answer these questions unless otherwise noted, we will apply the "plain meaning rule." The "plain meaning rule" provides that a statute must be construed in accordance with its plain language. *See, e.g., Coast Hotels and Casinos, Inc. v. Nevada State Labor Comm'n*, 117 Nev. 835, 840-41 (2001). As stated by the Supreme Court of Nevada, "[w]here the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself." *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 95 (2001) (citing *Erwin v. State*, 111 Nev. 1535, 1538-39 (1995)). We answer each of your questions in turn below.

1. Does NRS 353B.340 or NRS 353B.350 authorize the Program Account, the Administrative Account, or the Endowment Account of the Nevada College Savings Trust Fund to be maintained outside of the State's accounting system or outside of the State Treasury?

Subsection 4 of NRS 353.235 provides:

4. The revenues and other resources of any fund are subject to legislative authorization or appropriation and legislative review for each fiscal period except where that procedure conflicts with the Constitution or an express provision of statute.

Subsection 1 of NRS 353.253 provides:

1. Every agency, department and institution of the State of Nevada shall deposit all money received from the Federal Government, the counties or other sources, in the State Treasury as provided in NRS 353.250 unless otherwise provided by law. These deposits must be made to work program accounts directly or to other budget accounts.

Paul Townsend, Legislative Auditor
May 4, 2007
Page 2 of 10

Read together, these two provisions clearly establish the basic framework for the application of the state accounting system to all revenue received by the state unless otherwise required by the Constitution or specifically excepted by statute. Similarly, subsection 1 of NRS 353.253 clearly establishes the basic concept that all money received by the state must be deposited in the State Treasury unless the money is specifically excepted by statute.

Therefore, the question is whether a specific statute requires otherwise. NRS 353B.340 creates the Nevada College Savings Trust Fund and provides the details of its existence:

1. The Nevada College Savings Trust Fund is hereby created.
2. The Trust Fund is an instrumentality of this state, and its property and income are exempt from all taxation by this state and any political subdivision thereof.
3. The Trust Fund consists of:
 - (a) All legislative appropriations made thereto;
 - (b) All money acquired by or for the use of the Trust Fund from:
 - (1) Any other governmental source, including, without limitation, any grant from the Federal Government, or a state or local government; or
 - (2) Any private source, including, without limitation, any gift, bequest, devise or endowment;
 - (c) All money deposited in accordance with savings trust agreements; and
 - (d) All earnings on the money in the Trust Fund.
4. All money deposited in accordance with savings trust agreements and all earnings on such money:
 - (a) Are not the property of this state, and this state has no claim to or interest in such money; and
 - (b) Must not be commingled with money of this state.
5. A savings trust agreement or any other contract entered into by or on behalf of the Trust Fund does not constitute a debt or obligation of this state, and no account owner is entitled to any money in the Trust Fund except for that money on deposit in or accrued to his account.
6. The money in the Trust Fund must be preserved, invested and expended solely pursuant to and for the purposes authorized by NRS 353B.300 to 353B.370, inclusive, and must not be loaned or otherwise transferred or used by this state for any other purpose.

NRS 353B.350 requires the State Treasurer to administer the Trust Fund and to establish such accounts as necessary, including a Program Account, Administrative Account and Endowment Account:

1. The Trust Fund must be administered by the State Treasurer.

Paul Townsend, Legislative Auditor
May 4, 2007
Page 3 of 10

2. The State Treasurer shall establish such accounts within the Trust Fund as he determines necessary, including, without limitation, a Program Account, an Administrative Account and an Endowment Account.

3. The Program Account must be used for the receipt, investment and disbursement of money pursuant to savings trust agreements.

4. The Administrative Account must be used for the deposit and disbursement of money to administer and market the Nevada College Savings Program and to supplement the administration and marketing of the Nevada Higher Education Prepaid Tuition Program set forth in NRS 353B.010 to 353B.190, inclusive.

5. The Endowment Account must be used for the deposit of any money received by the Trust Fund that is not received pursuant to a savings trust agreement and, in the determination of the State Treasurer, is not necessary for the use of the Administrative Account. The money in the Endowment Account may be expended for any purpose related to the Nevada College Savings Program or otherwise to assist the residents of this state to attain postsecondary education.

An examination of the plain language of NRS 353B.340 and 353B.350 indicates that neither section expressly states whether the Trust Fund must be maintained inside or outside of the State Treasury. Subsection 2 of NRS 353B.340 provides that the Trust Fund is an instrumentality of the State and subsection 1 of NRS 353B.350 requires the Treasurer to administer the Trust Fund. Subsection 3 of NRS 353B.340 provides that the Trust Fund consists of appropriations made to the fund, governmental grants and private gifts and donations as well as all money acquired through savings trust agreements and the interest earned thereon. Additionally, subsection 4 of NRS 353B.340 provides that money deposited in the Trust Fund by individuals who are saving for college "must not be commingled with money of this state." Therefore, it appears that the Trust Fund was intended to contain both state and private money.

The accounts about which you have inquired are described in subsections 3, 4 and 5 of NRS 353B.350. Subsection 3 indicates that the Program Account must be used for the receipt, investment and disbursement of money pursuant to the savings trust agreements. Subsection 4 indicates that the Administrative Account must be used to hold the money for the administration and marketing of the program. Subsection 5 provides for the Endowment Account to be used for money not received pursuant to a savings trust agreement that the Treasurer determines to be not necessary for the use of the Administrative Account.

The specific provisions relating to the Trust Fund do not expressly authorize the money in the fund to be maintained outside the State Treasury or outside the state accounting system. The provisions of subsection 4 of NRS 353.235 and subsection 1 of NRS 353.253 therefore apply to require the Trust Fund to be maintained in the State Treasury and within the state accounting system.

Paul Townsend, Legislative Auditor
May 4, 2007
Page 4 of 10

We reviewed the Nevada Constitution and determined that the Constitution does not contain any provisions that could be construed as requirements relating to accounting for the Trust Fund. Because subsection 1 of NRS 353B.310 requires the Treasurer to adopt regulations to establish and carry out the Program which must comply with 26 U.S.C. § 529, we have also reviewed the regulations and the federal law to ensure that nothing in the federal law would require these accounts to be kept outside of the State Treasury or to be accounted for outside of the state accounting system. There are no regulations or federal law on point. Therefore, in accordance with NRS 353.235 and 353.253, it is the opinion of this office that the Program Account, the Administrative Account, and the Endowment Account of the Nevada College Savings Trust Fund must not be maintained outside of the State's accounting system or outside of the State Treasury.

2. Does NRS 353B.340 or NRS 353B.350 authorize the payment of the administrative expenses of the Nevada College Savings Trust Fund from a Budget Account within the State's General Fund? If not, must those expenses be paid from the Administrative Account in the Nevada College Savings Trust Fund pursuant to NRS 353B.350?

The only authorization for the payment of administrative expenses contained in NRS 353B.340 or 353B.350 is included in subsection 4 of NRS 353B.350 which provides that: "The Administrative Account must be used for the deposit and disbursement of money to administer and market the Nevada College Savings Program and to supplement the administration and marketing of the Nevada Higher Education Prepaid Tuition Program set forth in NRS 353B.010 to 353B.190, inclusive." The plain meaning of this language requires the Administrative Account to be used to receive and pay out the money required for the administrative expenses of the Program. There is no authority to pay administrative expenses from a budget account in the State General Fund included in NRS 353B.340 and 353B.350. However, this section, by its terms, does not prohibit or otherwise limit the payment of the administrative expenses from a budget account in the State General Fund. It simply provides the manner in which the Treasurer must use the Administrative Account if he creates one.

There is no specific authority in statute to pay the administrative expenses of the Program, including the Trust Fund, from a budget account in the State General Fund but such authority could be included in the budget approved by the Legislature for the Office of the Treasurer. The legislatively approved budget of the Treasurer could contain authority for the Treasurer to expend money for all or a portion of the administrative expenses of the Program. That reference would be contained in the budget documents for the Office of the Treasurer. If the budget for the applicable period authorized the Treasurer to expend money appropriated to or authorized for expenditure by the Treasurer, that money would be contained in a budget account in the State General Fund and that money would be available to the Treasurer for expenditure on administrative expenses of the Program.

Paul Townsend, Legislative Auditor
May 4, 2007
Page 5 of 10

Additionally, NRS 353B.360 provides that:

The State Treasurer may accept and expend on behalf of the Trust Fund money provided by private entities for direct expenses or marketing. Such money is not a part of the Trust Fund.

This language serves as an ongoing legislative authorization for the expenditure of money provided by one or more private entities to pay the administrative expenses of the Trust Fund. Since the section clearly specifies that the money is not part of the Trust Fund, none of the provisions governing the Trust Fund are applicable. However, the provisions of chapter 353 of NRS are applicable. Therefore, if provided, this money would be required by subsection 1 of NRS 353.253 and NAC 353B.710 to be deposited in the State Treasury. Further, NRS 353.249 would require that the money be credited to the State General Fund:

Except as otherwise expressly provided in a particular statute:

1. All money which belongs to the State must be deposited in the State Treasury.
2. All money which is deposited in the State Treasury must be credited to the State General Fund.

This is an additional way in which money could lawfully be paid for administrative expenses of the Trust Fund from a budget account in the State General Fund.

Therefore, it is the opinion of this office that neither NRS 353B.340 nor 353B.350 authorize the payment of the administrative expenses of the Nevada College Savings Trust Fund from a Budget Account within the State General Fund. Additionally, it is the opinion of this office that those expenses must be paid from the Administrative Account in the Nevada College Savings Trust Fund pursuant to NRS 353B.350, from a budget account in the State General Fund authorized by NRS 353B.360, or as otherwise authorized in the budget of the Treasurer.

3. Since the Endowment Account referred to in subsection 5 of NRS 353B.350 has not been established or used, does NRS 353B.340 or NRS 353B.350 require all program fees earned by the State for the Nevada College Savings Program to be deposited into the Administrative Account within the Nevada College Savings Trust Fund?

Amendment #1 to the contract between Upromise and the Board provides that the fixed and supplemental program fees are considered "money from private entities for direct expenses and marketing." As such, these fees would be excluded from the Trust Fund by NRS 353B.360 which provides that:

Paul Townsend, Legislative Auditor
May 4, 2007
Page 6 of 10

The State Treasurer may accept and expend on behalf of the Trust Fund money provided by private entities for direct expenses or marketing. Such money is not a part of the Trust Fund.

Therefore, those fees could not be deposited in the Administrative Account.

4. Does NRS 353B.340, NRS 353B.350 or NRS 353B.360 authorize the State Treasurer's Office to direct the Program Manager to pay certain administrative expenses of the Nevada College Savings Program using State program fee revenues held by the Program Manager?

NRS 353B.340, 353B.350 and 353B.360 neither authorize nor prohibit such an arrangement. NRS 353B.360 permits the Treasurer to "accept and expend on behalf of the Trust Fund money provided by private entities for direct expenses or marketing." This provision would not apply to allow the State Treasurer to direct the Program Manager to hold a portion of the program fees payable to the state to pay the administrative expenses because it simply requires the money to be accepted and expended by the Treasurer.

Because the specific provisions relating to the Program do not expressly authorize the program fees to be maintained outside the State Treasury or outside the state accounting system, the provisions of subsection 4 of NRS 353.235 and subsection 1 of NRS 353.253, as previously discussed, would apply to require the Treasurer to deposit the program fees in the State General Fund in the State Treasury and to expend those fees for the purposes authorized by statute and within the state accounting system. Thus, it is the opinion of this office that the Treasurer cannot direct the Program Manager to hold program fees payable to the State to pay administrative expenses of the Program since the program fees are a resource of the State and are subject to legislative authorization or appropriation.

5. Are the provisions of the State Budget Act and the Authorization Act violated if the Program's total administrative expenses recorded in Budget Account 1092 and those paid by the Program Manager using fees earned by the State, exceed the authorized expenditure amounts specified for each fiscal year?

NRS 353.235 provides that "[t]he revenues and other resources of any fund are subject to legislative authorization or appropriation and legislative review for each fiscal period except where that procedure conflicts with the Constitution or an express provision of statute." The only provision regarding the Program and the Trust Fund that directly relates to the expenditure of money is contained in NRS 353B.360 which provides that the Treasurer may "accept and expend on behalf of the Trust Fund money provided by private entities for direct expenses or marketing." Although this provision expressly authorizes the Treasurer to receive and expend money from private entities, the section does not state that the provisions of the State Budget Act do not apply to the

Paul Townsend, Legislative Auditor
May 4, 2007
Page 7 of 10

expenditures made pursuant to that section or in any other way conflict with the provisions of the State Budget Act. That is, the provisions of NRS 353B.360 can be applied at the same time that the provisions of the State Budget Act are applied without conflicting. The money from private entities could be accepted and expended by the Treasurer while still accounting for the money in the state system. Indeed, the regulations adopted by the Treasurer pursuant to NRS 353B.310 specifically require the Treasurer to account for the money accepted from private entities separately in the State Treasury. (NAC 353B.710) Therefore, it is the opinion of this office that the provisions of the State Budget Act and the Authorization Act would be violated if the Program's total administrative expenses recorded in Budget Account 1092 and those paid by the Program Manager using fees earned by the State, exceed the authorized expenditure amounts specified for each fiscal year.

6. Are the provisions of the State Accounting Procedures Law violated if the financial resources, related liabilities and other financial transactions of Nevada College Savings Trust Fund are not maintained in an accounting system or as a separate and distinct fiscal and accounting entity with a self-balancing set of accounts?

As noted in question 4 above, it is the opinion of this office that the Trust Fund is subject to the State Accounting Procedures Law. Therefore, it is the opinion of this office that the State Accounting Procedures Law is violated if the financial resources, related liabilities and other financial transactions of the Trust are not maintained in an accounting system or as a separate and distinct accounting entity with a self-balancing set of accounts.

7. Are the Fixed Program Fees and Supplemental Fees paid to the State pursuant to Amendment #1 to the UPromise contract considered money acquired by or for the use of the Trust Fund from a private source as defined by paragraph (b)(2) of subsection 3 of NRS 353B.340? If not, are these fees considered money provided by a private entity for direct expenses or marketing as defined by NRS 353B.360?

NRS 353B. 360 provides that “[t]he State Treasurer may accept and expend on behalf of the Trust Fund money provided by private entities for direct expenses or marketing” and provides that “such money is not a part of the Trust Fund.” NAC 353B.710 provides that “[i]f the State Treasurer, pursuant to NRS 353B.360, accepts on behalf of the Nevada College Savings Trust Fund money provided by private entities for direct expenses or marketing, the State Treasurer will account for the money separately in the State Treasury” and “expend the money from time to time for direct expenses or marketing activities related to the Program.”

Amendment #1 to the contract between UPromise and the State defines a “fixed program fee” as “[a] cash payment of \$200,000 per year from [UPromise] as a program fee to support marketing and administration of Nevada’s 529 programs, inclusive of

Paul Townsend, Legislative Auditor
May 4, 2007
Page 8 of 10

prepaid tuition and college savings programs.” Marketing is explicitly one of the intended uses of the fee. Administration of the programs, the other intended use of the fee, is a direct expense incurred by the Nevada College Savings Programs. Additionally, Amendment #1 to the contract between UPromise and the State describes the “supplemental fee” as “a supplemental program fee.” Because a fee that supplements the program fee has the same purpose as the fee that it supplements, the supplemental fee has the same purpose as the program fee. Thus, since the fixed program fee and the supplemental fee constitute money from a private entity for direct expenses or marketing, it is the opinion of this office, that both the “fixed program fee” and the “supplemental program fee” in Amendment #1 are “money provided by a private entity for direct expenses and marketing” pursuant to NRS 353B.360.

8. Was the Treasurer authorized pursuant to NRS 353B.370 to pay for the legal services provided between July 2001 and June 30, 2002, for the Nevada College Savings Program under the contract with Orrick, Herrington & Sutcliffe, LLP approved by the Board of Examiners in September 2000? If not, was the Board required by NRS 353B.370 or other state laws to enter into a contract for the legal services provided?

NRS 284.173 allows the Treasurer “to contract for the services of persons as independent contractors.” In September 2000, the Board of Examiners approved a contract between the Treasurer’s Office and Orrick, Herrington & Sutcliffe, LLP (“Orrick”) under which Orrick would provide bond, disclosure and special counsel services relating to the issuance of State securities. The plain language of NRS 284.173 authorized the Treasurer to enter into that contract with Orrick and thus the Treasurer was authorized to pay Orrick for the services rendered by Orrick pursuant to that contract.

NRS 353B.370 authorizes the Board of Trustees of the College Savings Plans of Nevada (“Board”), not the Treasurer, to contract for services provided to the Program. Subsection 5 of NRS 353B.370 states that the Board “may . . . contract for goods and services necessary for the effective and efficient operation of the” Program. In addition, subsection 9 of NRS 353B.370 provides that “all contracts authorized by this section are subject to the requirements of chapter 333 of NRS” with two exceptions that are not relevant to our analysis. Because NRS 353B.370 grants authority to contract to the Board only, the Board must approve or authorize any contract for services provided to the program after following the procedures described in chapter 333 of NRS. Because NRS 353B.350 provides that the Treasurer is the administrator of the Nevada College Savings Trust Fund (“Trust Fund”), the Treasurer is authorized to pay for services rendered pursuant to a contract which was approved by the Board.

The information provided to this office included minutes of a meeting of the Board in July of 2001. These minutes indicate that at the meeting of the Board in July of 2001, the Board discussed the retention of outside counsel. The Treasurer stated that if the Board approved the retention of Orrick as outside counsel, the agreement between the Board and Orrick would “probably be added to the existing contract and that would be

Paul Townsend, Legislative Auditor
May 4, 2007
Page 9 of 10

addressed at a future Board of Examiners meeting.” A member of the Board made a motion to designate Orrick as counsel for the Program and the Board unanimously approved the motion. Thus, it appears that the Board designated Orrick as counsel for the Program but there is no evidence that the Board complied with the requirements of chapter 333 of NRS before doing so.

In conclusion, the plain language of NRS 353B.370 authorizes only the Board to contract for services provided to the program. Based on the information presented to us, it appears that the Board approved the retention of Orrick as outside counsel for the Program without complying with the requirements of chapter 333 of NRS and that the Board intended that agreement to be added to the existing contract between the Treasurer’s Office and Orrick. We are unable to determine whether the Board of Examiners approved that the addition of the agreement between the Board and Orrick to the existing contract between the Treasurer’s Office and Orrick. Therefore, we cannot determine the exact status of the relationship between the Board and Orrick from July 2001 to June 30, 2002. However, because the Board approved the addition of the agreement between Board and Orrick to the existing contract between the Treasurer and Orrick, it is the opinion of this office that an agreement between the Board and Orrick would have expired June 30, 2002, the same date that the existing contract between the Treasurer and Orrick expired.

9. Was the Treasurer authorized pursuant to NRS 353B.370 to pay for the legal services provided between July 1, 2002 and June 30, 2006, for the Nevada College Savings Program under the contracts with Orrick, Herrington & Sutcliffe, LLP approved by the Board of Examiners in September 2002 and June 2004? If not, was the Board required by NRS 353B.370 or other state laws to enter into a contract for the legal services provided?

The analysis conducted for the previous question also applies to this question. As stated above, NRS 353B.370 authorizes only the Board to contract for services provided to the Program. As stated above, subsection 5 of NRS 353B.370 authorized the Board to contract for services provided to the Program and subsection 9 of NRS 353B.370 requires the Board to comply with chapter 333 of NRS before entering into a contract. In addition, because the Board intended to add its agreement with Orrick to the existing contract between the Treasurer and Orrick, the contract between the Board and Orrick expired on June 30, 2002, the same day the existing contract expired. There does not appear to be any evidence to indicate that the Board approved a contract with Orrick after June 30, 2002. However, it is possible that, at the meeting of the Board in July of 2001, the Board believed it was adding its agreement with Orrick to any future contract between the Treasurer and Orrick. If that is the case, the Treasurer was authorized pursuant to NRS 353B.370 to pay for the legal services provided between July 1, 2002 and June 30, 2006, for the Nevada College Savings Program under the contracts with Orrick, Herrington & Sutcliffe, LLP approved by the Board of Examiners in September 2002 and June 2004. If that is not the case, then it appears that the Treasurer was not

Paul Townsend, Legislative Auditor
May 4, 2007
Page 10 of 10

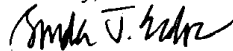
authorized pursuant to NRS 353B.370 to pay for the legal services provided between July 1, 2002 and June 30, 2006, for the Nevada College Savings Program under the contracts with Orrick, Herrington & Sutcliffe, LLP approved by the Board of Examiners in September 2002 and June 2004.

10. Were the payments to The Rose/Glenn Group made from state funds held by the Program Manager subject to the terms and conditions of the contract and amendments mentioned above with the Board and Treasurer's Office? If yes, did the Board violate the terms and conditions of the contract by exceeding the maximum amount in fiscal years 2005 and 2006?

Based on the information provided to this office, it appears that Upromise made payments to The Rose/Glenn Group at the direction of the Treasurer for services provided to the Program. Absent any information to the contrary, or information that another contract existed between the Board and Rose/Glenn, it appears that these payments were subject to the terms and conditions of the contract between the Board and Rose/Glenn and the amendments to that contract. The contracts between the Board and Rose/Glenn provide that Rose/Glenn will provide services to the Board in an amount which does not exceed a stated amount. Based on the information provided to this office, it appears that the Rose/Glenn Group violated the terms and conditions of the contract by exceeding the maximum amounts stated in the contracts for fiscal years 2005 and 2006. Additionally, it appears that this additional amount may have exceeded the amount authorized for expenditure in the budget of the Treasurer.

The information provided to us does not indicate whether the Board, the Treasurer and Rose/Glenn executed an oral or written modification of the maximum amount of the contract and, if so, whether they complied with the provisions of chapter 333 of NRS in making the modification or executing the additional contract. If such a modification was legally executed, neither the Board, the Treasurer nor Rose/Glenn breached the contract. Because we do not know whether such a modification was executed, we are unable to determine whether the Board, the Treasurer or Rose/Glenn breached the contract.

Sincerely,



Brenda J. Erdoes
Legislative Counsel

Appendix K
Response From the Office of the State Treasurer

Kate Marshall
State Treasurer



Patrick Foley
Chief Deputy Treasurer
Renee L. Parker, Esq.
Chief of Staff

STATE OF NEVADA
OFFICE OF THE STATE TREASURER

May 10, 2007

Paul V. Townsend, CPA
Legislative Auditor
State of Nevada
Legislative Counsel Bureau
401 S. Carson Street
Carson City, NV 89701-4747

Dear Mr. Townsend:

I have reviewed your recent audit of the Nevada College Savings Program ("Program") administered by the Office of the State Treasurer and the Board of Trustees of the College Savings Plans of Nevada. Pursuant to NRS 281.821, I am providing herein the required written statement of explanation to the audit report. Per your request, I am also including the completed "Office of the State Treasurer Response to Audit Recommendations" form.

As an initial matter, I note that the audit covers the period from inception of the Program in 2001 to December 31, 2006, a time period when I was not the State Treasurer, and had no dealings with the Office. Because the improper activities that led to the audit recommendations were conducted under a previous administration prior to my taking office, it is difficult for me to provide any explanation for such activities. I do, however, commit to remedy as soon as possible your conclusions that the financial activities of the Nevada College Savings Trust Fund were not properly accounted for under the prior administration and that the operations of the Program were not always conducted in accordance with applicable laws, regulations, and contractual obligations under the prior administration. Not only do I commit to immediately remedy these issues, but I also commit to the Legislature and the taxpayers to ensure that such mismanagement of State monies and disregard for the law does not occur under my administration. As discussed herein, I am generally in agreement with your findings and recommendations, and view this audit as a valuable product for the citizens of Nevada.

CARSON CITY OFFICE
State Treasurer
101 N. Carson Street, Suite 4
Carson City, Nevada 89701-4786
(775) 684-5600 Telephone
(775) 684-5623 Fax

STATE TREASURER PROGRAMS
Governor Guinn Millennium Scholarship Program
Nevada Prepaid Tuition Program
Unclaimed Property
Uprromise College Fund 529 Plan

LAS VEGAS OFFICE
555 E. Washington Avenue, Suite 4600
Las Vegas, Nevada 89101-1074
(702) 486-2025 Telephone
(702) 486-3246 Fax



Mr. Paul V. Townsend, CPA
Page 2

I would also like to take this opportunity to thank you and your staff for the professionalism exhibited throughout this audit, for tracking down information and, for accounting of events that occurred prior to my term; much of which I was unable to provide to you due to the lack of documentation in the office. I am impressed at the professional quality of this audit, especially given the accelerated timeframe in which you and your staff were required to gather the information and reconcile the noted discrepancies between the financials, the lack of documentation and the information contained in Budget Account 1092.

With respect to the audit, your specific recommendations and my responses and comments are as follows:

Recommendation Number 1: Deposit all fees earned and other funds received by the Program in the State Treasury.

Response: I accept this recommendation, and note for your information that upon my discovery of the discrepancies in the budget account, prior to my request for this audit, I directed my staff to ensure that all such fees were deposited into the State Treasury.

Recommendation Number 2: Process all Program expenditures through the State's Accounting System and record to budget accounts authorized by the Legislature.

Response: I accept this recommendation, and similar to my response to Recommendation Number 2, I have already instituted steps to remedy this issue. Upon my discovery of the discrepancies in the budget account, prior to my request for this audit, I directed my staff to ensure that our expenditures are properly processed, recorded and reconciled with Legislative authority.

Recommendation Number 3: Work with the State Controller to re-establish the Trust Fund.

Response: I accept this recommendation and will accomplish this task as soon as practicable.

Recommendation Number 4: Account for applicable Program activity in the Trust Fund.

Response: I accept this recommendation and will accomplish this task in conjunction with my response to recommendation Number 3.

Recommendation Number 5: Request the Program Manager to provide the level of detail needed to record Program activity in the State's Accounting System.

Response: I accept this recommendation and have previously requested this information from the Program Manager. The Program Manager has been responsive to my requests

Mr. Paul V. Townsend, CPA
Page 3

and very cooperative since the inception of this audit, which I anticipate will continue in the future.

Recommendation Number 6: Prepare annual financial statements for the Nevada College Savings Trust Fund, and present them to the Board of Trustees.

Response: I accept this recommendation and will ensure full compliance therewith.

Recommendation Number 7: Ensure the Board of Trustees evaluates proposals and enters into contracts as required by state law.

Response: I accept this recommendation and, as the new Chairman of the Board of Trustees, will ensure full compliance therewith.

Recommendation Number 8: Review billings to ensure contractors are paid in accordance with contract rates.

Response: I accept this recommendation and will be further reviewing whether the State has any legal remedy to recoup the overpayments of taxpayer monies made by the prior administration.

Recommendation Number 9: Require contractors for professional services to submit bills monthly after services are provided.

Response: I accept this recommendation.

Recommendation Number 10: Ensure contractors submit documentation to support expenses reimbursable under contracts.

Response: I accept this recommendation

Recommendation Number 11: Monitor payments to contractors to ensure contract terms are complied with.

Response: I accept this recommendation

Recommendation Number 12: Establish control procedures to ensure key information about Program operations required in vendor contracts is provided to the Board.

Response: I accept this recommendation and, as the new Chairman of the Board of Trustees, I have previously requested that the Program Manager prepare information about program operations for presentation to the Board.

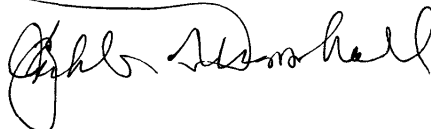
Recommendation Number 13: Develop detailed accounting and internal control procedures for the Nevada College Savings Program.

Mr. Paul V. Townsend, CPA
Page 4

Response: *I accept this recommendation.*

In closing, I would like to thank you once again for the professionalism your auditors brought to this process. You have provided me with the tools necessary to remedy the deficiencies of the prior administration and to enable me to carry out my oath of office to ensure that this office is functioning efficiently and safeguarding the taxpayer's monies. I will be placing this audit on the next agenda for the Board of Trustees to inform them of the resulting findings and recommendations, and the reason for the changes I will be implementing in response to the audit, some of which may require contract amendments and other actions requiring their approval. In this connection, I would appreciate it if you would authorize your auditors to present the audit findings to the Board and be present to respond to any questions they may have.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kate Marshall".

KATE MARSHALL

State Treasurer

**Office of the State Treasurer
Response to Audit Recommendations**

<u>Recommendation Number</u>		<u>Accepted</u>	<u>Rejected</u>
1	Deposit all fees earned and other funds received by the Program in State Treasury	<u> X </u>	<u> </u>
2	Process all Program expenditures through the State's Accounting System and record to budget accounts authorized by the Legislature	<u> X </u>	<u> </u>
3	Work with the State Controller to re-establish the Trust Fund	<u> X </u>	<u> </u>
4	Account for applicable Program activity in the Trust Fund	<u> X </u>	<u> </u>
5	Request the Program Manager to provide the level of detail needed to record Program activity in the State's Accounting System.....	<u> X </u>	<u> </u>
6	Prepare annual financial statements for the Nevada College Savings Trust Fund, and present them to the Board of Trustees.....	<u> X </u>	<u> </u>
7	Ensure the Board of Trustees evaluates proposals and enters into contracts as required by state law.....	<u> X </u>	<u> </u>
8	Review billings to ensure contractors are paid in accordance with contract rates	<u> X </u>	<u> </u>
9	Require contractors for professional services to submit bills monthly after services are provided	<u> X </u>	<u> </u>
10	Ensure contractors submit documentation to support expenses reimbursable under contracts	<u> X </u>	<u> </u>
11	Monitor payments to contractors to ensure contract terms are complied with	<u> X </u>	<u> </u>
12	Establish control procedures to ensure key information about Program operations required in vendor contracts is provided to the Board.....	<u> X </u>	<u> </u>
13	Develop detailed accounting and internal control procedures for the Nevada College Savings Program.....	<u> X </u>	<u> </u>
	TOTALS	<u> 13 </u>	<u> 0 </u>