

Report From Agency

STATE OF WISCONSIN DEPARTMENT OF FINANCIAL INSTITUTIONS

RULE REPORT TO THE LEGISLATURE

Definitions, account ownership, rollovers and refunds under the state's College Savings Program, s. 224.50, Stats., ss. DFI-CSP 1.02(17), 1.03, 1.09(4) and 1.12 / CR 19-155

Attached: Proposed rule, fiscal estimate and economic impact analysis, and Clearinghouse report to agency.

Governor's approval: The governor approved this rule on January 24, 2020.

Basis and purpose of the proposed rule: The Department of Financial Institutions, at the direction of the College Savings Program Board, proposes an order to amend ss. DFI-CSP 1.02(17), 1.03, 1.09(4) and 1.12 related to definitions, account ownership, rollovers and refunds under the state's College Savings Program, s. 224.50, Stats. There are four changes, all of which are intended to ensure that state administrative law does not serve as an impediment to program participants enjoying the full benefits and flexibility afforded under federal law.

Definition of "qualified higher education expenses." The federal statute governing college savings programs, 26 U.S.C. s. 529 ("Section 529"), authorizes individuals to use distributions from college savings programs to cover "qualified higher education expenses." Current Wisconsin administrative rules define "qualified higher education expenses" by reference to the federal definition set forth in 26 U.S.C. s. 529(e)(3), and note that any distribution for any other use "constitutes a nonqualified distribution" that may be subject to federal tax penalties. Wis. Admin. Code ss. DFI-CSP 1.02(17), 1.11(4). Since the adoption of the state administrative rule, however, Congress has expanded the scope of "qualified higher education expenses" in Section 529 to include elementary and secondary school tuition, expenses associated with apprenticeship programs, and student loan debt. *See* 26 U.S.C. s. 529(c)(7-9), as amended by the SECURE Act signed earlier this year. The proposed rule change would reflect those recent changes by defining "qualified higher education expenses" to include any expense treated as a qualified higher education expense under Section 529. This proposed change does not create any new tax benefits—those are established by federal and state tax law—but merely updates the statutory references to eliminate potential public confusion and administrative impediments when participants in Wisconsin's college savings program take advantage of newly available federal tax benefits.

Joint account ownership. The college savings program permits individuals, trusts, and entities to establish college savings accounts to cover educational costs for beneficiaries at eligible institutions. Wis. Stat. s. 224.50(2)(a). The current state administrative rule mandates that "[t]here shall be only one owner per account," DFI-CSP 1.03, which limits the flexibility of program participants in establishing and managing their accounts. The federal statute governing college savings programs, Section 529 does not expressly bar joint ownership of accounts. To ensure that program participants enjoy greater flexibility, the College Savings Program Board proposes

removing the one-owner restriction from DFI-CSP 1.03 and replacing it with language authorizing joint ownership of accounts to the full extent permitted by Section 529.

Rollovers. Regarding rollovers, DFI-CSP 1.09(4) authorizes participants to make rollover contributions from accounts held with other states' Section 529 college savings programs. Under the current administrative rule, "[i]f rollover distributions are allowed by another state's qualified tuition program, an account may deposit all or part of the funds from an account in that state's qualified tuition program to a new account in the program as provided under section 529 of the internal revenue code, and any regulations issued thereunder." The Board proposes to simplify this language and clarify its breadth by stating that rollovers are permitted to the full extent authorized by Section 529 or another state's qualified tuition program. This revision should ensure that Wisconsin administrative law will not be construed in a manner that could restrict this state's college savings program from accepting rollover contributions that would otherwise be permissible under the law of other affected jurisdictions.

Refunds. When students transfer or withdraw their enrollments, educational institutions may owe refunds of tuition and fees paid from those students' college savings accounts. Under the current state administrative rule, such refunds must be paid "directly to the program manager for credit to the applicable designated beneficiary's account." DFI-CSP 1.12. That rule is more restrictive than federal law, which permits a refund to be paid to any qualified college savings account for the beneficiary. 26 U.S.C. s. 529(c)(3)(D). For that reason, the College Savings Program Board proposes replacing the above-quoted language with language authorizing the payment of refunds in any manner permitted by Section 529.

Summary of comments, agency's response, and explanation of any modifications as a result of comments or testimony:

The agency received one written comment noting the potential inconsistency between the current DFI-CSP 1.03(17) and the recently expanded scope of qualified higher education expenses under federal law. The proposed rule was amended to address that potential inconsistency in Section 1 below.

Persons appearing or registering for or against the rule at hearing:

Public hearings on the rule were held on November 25, 2019 and January 13, 2020. No persons appeared or registered for or against the rule at the hearing.

Changes to analysis or fiscal estimate: None.

Response to legislative council recommendations: The recommendations were adopted in whole.

Final regulatory flexibility analysis, changes to energy impact report, housing impact analysis, and response to any report prepared by the SBRRB: n/a