

Clearinghouse Rule 19-155

PROPOSED ORDER OF THE DEPARTMENT OF FINANCIAL INSTITUTIONS COLLEGE SAVINGS BOARD

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 account ownership, rollovers and refunds under the state's College Savings Program, s. 224.50, Stats.

The scope statement for this rule, SS 106-19, was approved by the governor on October 3, 2019, published in *Administrative Register* No. 766A2 on October 14, 2019, and approved by the department on November 26, 2019. The proposed rule was approved by the governor on January 24, 2020.

ANALYSIS

1. Statutes interpreted: Section 224.50(2)(a), Stats., authorizes the College Savings Program Board to establish and administer a college savings program that allows an individual, trust, legal guardian, or entity described under 26 USC 529(e)(1)(C) to establish a college savings account.

2. Statutory authority: Section 224.50(2)(e), Stats., authorizes the College Savings Program Board to promulgate rules to implement and administer s. 224.50, Stats.

3. Explanation of agency authority: The College Savings Program Board, an attached board of the Department of Financial Institutions, administers the College Savings Program under s. 224.50, Stats.

4. Related statutes or rules: The College Savings Program is established by s. 224.50, Stats., and rules implementing this section are set forth in ch. DFI-CSP 1, Admin. Code.

5. Plain language analysis:

Proposed section 1 below. 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" 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.

Proposed section 2 below. Regarding 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.

Proposed section 3 below. 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.

Proposed section 4 below. Regarding 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.

6. Summary of, and comparison with, existing or proposed federal regulation:

Current federal law may afford participants greater flexibility in managing accounts under the college savings program than under the state’s current administrative rules, in the four ways described above.

7. Comparison with rules in adjacent states:

Minnesota and Michigan do not have any administrative code provisions regarding Section 529 college savings programs. Consistent with the proposed language of section 1 below, Illinois defines “qualified expenses” as any “expenses treated as ‘qualified higher education expenses’ under section 529” of the internal revenue code, while Iowa defines them as any qualified education expenses “as defined in section 529.” 23 Ill. Admin. Code s. 2500.20; Iowa Admin. Code r. 781-16.2. The Illinois administrative code does not address multiple-owner accounts, rollovers or refunds for college savings accounts. The Iowa administrative code authorizes rollovers, Iowa Admin. Code r. 781-16.13, and does not address multiple-owner accounts or refunds.

8. Summary of factual data and analytical methodologies:

The proposed changes are based on staff review of 26 U.S.C. s. 529 and an identification of provisions wherein state administrative law may be more restrictive than federal law.

9. Analysis and supporting documents used to determine effect on small business:

Small businesses are not affected by this rule.

10. Anticipated costs incurred by private sector:

No costs are anticipated to be incurred by college savings program account owners.

11. Effect on small business:

The proposed rule will have no effect on small business.

12. Agency contact person: James Diulio, College Savings Program Officer, Department of Financial Institutions, PO Box 8861, Madison, WI 53708-8861, tel. 608-264-7886.

13. Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the contact person shown below no later than the date on which the public hearing on this proposed rule order is conducted. Information as to the place, date and time of the public hearing will be published in the Wisconsin Administrative Register.

By mail: Mark Schlei, Deputy Chief Legal Counsel, Department of Financial Institutions, PO Box 8861, Madison, WI 53708-8861.

By delivery: Mark Schlei, Deputy Chief Legal Counsel, Department of Financial Institutions, 201 W. Washington Avenue, Suite 500, Madison, WI 53703.

By e-mail: DFIRulesComments@wisconsin.gov

Via the Legislative Council's Clearinghouse:
https://docs.legis.wisconsin.gov/code/chr/all/cr_19_155.

SECTION 1. DFI-CSP 1.02(17) is amended to read:

DFI-CSP 1.02(17) “Qualified higher education expenses” ~~has the meaning found in~~ includes any expense treated as a “qualified higher education expense” under section 529(e)(3) of the internal revenue code.

SECTION 2. DFI-CSP 1.03 is amended to read:

DFI-CSP 1.03 Account owner eligibility. Any person legally able to contract under applicable state law is eligible to establish an account for the benefit of a designated individual. To the extent permitted by section 529 of the internal revenue code, there shall ~~may~~ be only more than one account owner per account.

SECTION 3. DFI-CSP 1.09(4) is amended to read:

DFI-CSP 1.09(4) ROLLOVER CONTRIBUTIONS. ~~If rollover distributions are allowed by another state's qualified tuition program, an account owner 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~~ Rollovers from another state's qualified tuition program are permitted to the extent allowed by that state's program and by section 529 of the internal revenue code. When making a rollover contribution, the account owner shall complete the forms and make such disclosures of financial information as set forth in the program description and participation agreement. If the rollover distribution deposited in the program account would cause the total account balance of all accounts for that designated beneficiary to exceed the maximum contribution limit, the program manager shall refuse the excess funds.

SECTION 4. DFI-CSP 1.12 is amended to read:

DFI-CSP 1.12 Refund of qualified distribution payment. An eligible educational institution that owes a full or partial refund of a qualified distribution due to an overpayment of educational expenses or for any other reason shall pay the refund ~~directly to the program manager for credit to the applicable designated beneficiary's account. A refund may not be paid directly to the designated beneficiary or account owner~~ in any manner permitted by section 529 of the internal revenue code.

SECTION 5. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Department of Financial Institutions

Date: _____

By: _____

James Diulio
Department of Financial Institutions
College Savings Program Officer