

## Clearinghouse Rule CR 24-053

### PROPOSED ORDER OF THE DEPARTMENT OF FINANCIAL INSTITUTIONS, COLLEGE SAVINGS PROGRAM, OFFICE OF FINANCIAL CAPABILITY CREATING RULES

The Wisconsin Department of Financial Institutions – College Savings Program, proposes an order to repeal DFI-CSP 1.02 (19), 1.11 (4), and 1.13 (1) (c); and to amend DFI-CSP 1.01, 1.02 (1), (10), and (16), 1.09 (2) and (4), and 1.11 (1) of the Wisconsin Administrative Code, relating to eliminating obsolete provisions, correcting cross-references, eliminating rules that are redundant with statutes, correcting errors, and modifying the structure of existing rules in nonsubstantive ways.

The scope statement for this rule was approved by the Governor on January 4, 2024, published in *Administrative Register* No. 817A3 on January 16, 2024, and approved by the College Savings Program Board on March 21, 2024.

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#### ANALYSIS

**1. Statutes interpreted:**

Sections 224.50 (2) (e), 227.14 (1), and 227.29 (1) of the Wisconsin Statutes.

**2. Statutory authority:**

Sections 224.50 (2) (e), 227.14 (1), and 227.29 (1) of the Wisconsin Statutes.

### **3. Explanation of agency authority:**

Pursuant to Wis. Stats., s. 224.50 (2) (e), the College Savings Program Board is authorized to “[p]romulgate rules to implement and administer” the program.

Wis. Stat., s. 227.14 (1), requires agencies drafting administrative rules to “adhere substantially to the form and style used by the legislative reference bureau in the preparation of bill drafts and the form and style specified in the manual prepared by the legislative council staff and the legislative reference bureau under s. [227.15 \(7\)](#),” while Wis. Stat. s. 227.29 (1) directs agencies to address rules that are unauthorized, obsolete or unnecessary, or duplicative of, superseded by, or in conflict with other applicable state or federal law.

### **4. Related statutes or rules:**

Wisconsin law requires the College Savings Program Board to “[e]nsure that the college savings program meets the requirements of a qualified state tuition plan under [26 USC 529](#),” to utilize section 529’s definitions of qualified or nonqualified withdrawals, and to conform to section 529 in other respects. See Wis. Stats., ss. 224.50 (2) (b), 224.50 (2) (e), 224.50 (2) (i), and 224.50 (3) (a) 3.

### **5. Plain language analysis:**

The Department’s College Savings Program Board (Board) seeks to amend certain rules it administers in two nonsubstantive ways.

First, it seeks to repeal or modify certain provisions of chapter DFI-CSP 1 of the Wisconsin Administrative Code that have become obsolete or unauthorized due to changes in 26 U.S.C. 529, the federal law governing qualified tuition programs such as Wisconsin’s college savings program. For example, section DFI-CSP 1.01 describes the purpose of the program as enabling participants to invest funds “to pay the cost of attendance at an institution of higher education.” While that statement remains accurate in part—many Wisconsin families use the college savings program to help pay for college or other higher education—it has become incomplete. Amendments to federal and state tax law since the time DFI-CSP 1.01 was promulgated have established that college savings program funds may also be used for other purposes, including the costs of elementary or secondary school

attendance, the costs of participating in certified apprenticeship programs, and rollover contributions to beneficiaries' retirement accounts. The Board seeks to update this and similar references in its administrative rules to remove outdated language and more accurately reflect the full range of currently permissible uses of invested funds under applicable tax law.

Second, the proposed revisions modify the structure of existing rules to conform to current Wisconsin drafting practices, which will provide greater clarity and consistency with the drafting style of other statutes and rules administered by the agency.

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

26 U.S.C. 529 is the federal tax statute governing qualified tuition programs such as Wisconsin's college savings program. It establishes the requirements for state programs, permissible uses of funds by program participants, and penalties for impermissible uses.

Wisconsin law requires the College Savings Program Board to “[e]nsure that the college savings program meets the requirements of a qualified state tuition plan under [26 USC 529](#),” to utilize section 529's definitions of qualified or nonqualified withdrawals, and to conform to section 529 in other respects. See Wis. Stats., ss. 224.50 (2) (b), 224.50 (2) (e), 224.50 (2) (i), and 224.50 (3) (a) 3.

## **7. Comparison with rules in adjacent states:**

Each of Wisconsin's neighboring states has also implemented a college savings program subject to the requirements of 26 USC 529. See, for example, Minn. Stat. [chapter 136G](#); Iowa Code, [chapter 12D](#); [15 ILCS 505/16.5](#), Illinois Compiled Statutes; Michigan Compiled Laws, [section 390-1471](#) to [section 390-1486](#), [Michigan Education Savings Program Act, Act 161 of 2000](#).

## **8. Summary of factual data and analytical methodologies:**

The proposed changes are based on the experience of DFI staff and the College Savings Program Board in administering this program, pursuant to state law and 26 USC 529.

The revisions foster compliance with existing statutory policies requiring the elimination of obsolete or unauthorized rules, correction of cross-reference errors, elimination of conflicts with current statutes, and modification of existing rules to ensure consistency with current drafting conventions.

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

Small businesses are not affected by these revisions.

**10. Anticipated costs incurred by private sector:**

These proposed amendments are non-substantive in nature and would not have an economic impact upon the Department, the Board, or college savings program account owners and beneficiaries.

**11. Effect on small business:**

Small businesses are not affected by these revisions.

**12. Agency contact person:**

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**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: Marc Shovers, Assistant Chief Legal Counsel, Department of Financial Institutions, PO Box 8861, Madison, WI 53708-8861.

By delivery: Marc Shovers, Assistant Chief Legal Counsel, Department of Financial Institutions, 4822 Madison Yards Way, North Tower, Madison, WI 53703.

By e-mail: [DFIComments@dfi.wisconsin.gov](mailto:DFIComments@dfi.wisconsin.gov)

Via the department's website: <https://dfi.wi.gov/Pages/About/ProposedRules.aspx>

The Comment Period ended on the date of the public hearing, August 28, 2024.

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## TEXT OF RULE

**SECTION 1.** DFI-CSP 1.01 is amended to read:

DFI-CSP 1.01 **Purpose and analysis.** This chapter establishes the procedures, standards, and eligibility requirements for investment in accounts under the Wisconsin college savings program, into which a participant may invest funds to be used by individual beneficiaries ~~to pay the cost of attendance at an institution of higher education. The Wisconsin college savings program is established as a qualified tuition program pursuant to section 529 of the internal revenue code [26 USC 529], and is administered by the department for the purposes provided in section 529 of the internal revenue code.~~

**SECTION 2.** DFI-CSP 1.02 (1), (10), and (16) are amended to read:

DFI-CSP 1.02 (1) “Account” means a formal record of transactions maintained for a particular designated beneficiary ~~to meet qualified higher education expenses~~ under the program.

(10) “Member of the family” has the meaning found in section [529](#) (e) (2) of the internal revenue code.

(16) “Qualified distribution” means any distribution of funds, ~~as defined in section [529](#) of the internal revenue code, for qualified higher education expenses~~ from an account pursuant to a distribution request from the account owner that does not result in a penalty as provided in 26 USC s. 529 (c) (6).

**SECTION 3.** DFI-CSP 1.02 (19) is repealed.

**SECTION 4.** DFI-CSP 1.09 (2) and (4) are amended to read:

DFI-CSP 1.09 (2) MAXIMUM CONTRIBUTION LIMIT. Contributions to the accounts established for a designated beneficiary ~~shall~~ may not, in the aggregate, exceed ~~that amount necessary to provide for the qualified higher education expenses of the designated beneficiary. The board shall establish from time to time the maximum amount that may be contributed in the aggregate to the accounts of an individual designated beneficiary.~~ the maximum contribution limit established under s. 224.50 (3) (bm), Stats. Contributions in excess of that limit ~~shall~~ may not be accepted and shall be returned to the contributor.

(4) ROLLOVER CONTRIBUTIONS. 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 5.** DFI-CSP 1.11 (1) is amended to read:

DFI-CSP 1.11 (1) CALCULATING EARNINGS ON MULTIPLE ACCOUNTS. If an individual is the designated beneficiary of more than one account, all contributions

and earnings with respect to those accounts shall be treated in a manner consistent with the requirements of section 529 of the internal revenue ~~service~~ code for purposes of calculating the earnings portions of any distribution with respect to that designated beneficiary.

**SECTION 6.** DFI-CSP 1.11 (4) is repealed.

**SECTION 7.** DFI-CSP 1.13 (1) (c) is repealed.

**SECTION 8.** EFFECTIVE DATE. This rule shall take effect on the first day of the sixth month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

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/s/ Jessica Wetzel \_\_\_\_\_

Department Head or Authorized Signature

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August 5, 2024

Date Submitted

