



September 12, 2023

Taina Edlund  
Krishna Vallabhaneni  
U.S. Department of the Treasury  
Internal Revenue Service  
1111 Constitution Ave., NW  
Washington, DC 20224

Dear Taina and Krishna:

Established to make education more financially attainable, the College Savings Plans Network (“CSPN”, “we”, or “our”) is a national non-profit association and the leading objective source of information about qualified tuition programs (“529 Plans”). An affiliate of the National Association of State Treasurers (“NAST”), CSPN works with its members to enhance 529 Plans and assist American families in planning and saving for education. CSPN members include state officials and state-sponsored 529 Plans, as well as program managers, investment managers, and many organizations providing services to 529 Plans, including legal, accounting, and general consulting services.

CSPN, on behalf of its members, is writing to you regarding certain aspects of the SECURE 2.0 Act of 2022 (the “Act”) which was included as part of amendments to the Internal Revenue Code (“Code”) enacted under the Consolidated Appropriations Act, 2023 (“CAA”). Effective for distributions after December 31, 2023, the SECURE 2.0 Act provides 529 Plan savers with the option of performing a rollover from a 529 Plan to a Roth IRA maintained for the benefit of the designated beneficiary. We are writing to you today to provide industry insight on best practices and necessary safe harbors relating to (i) the fifteen (15) year maintenance period, (ii) the five (5) year exclusion period, and (iii) reporting requirements from the 529 Plan administrator to the Roth IRA trustee.<sup>1</sup>

## **I. The Trustee-to-Trustee Transfer to Roth IRA – 15-Year Maintenance Period**

Section 126(a) of the Act [new Code Section 529(c)(3)(E)(i)] requires that assets must be maintained in a 529 Plan for a 15-year period ending on the date of transfer to a Roth IRA (the “Fifteen Year Rule”).

We believe that changes to the 529 Plan account – including, but not limited to, designated beneficiary changes, account owner changes, rollovers between 529 Plans, and changes to the

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<sup>1</sup> Please note that CSPN is aware that the Investment Company Institute, the Securities Industry and Financial Markets Association and the College Savings Foundation have each submitted letters concurring with the views in this letter.

recordkeeper – should not “reset” the Fifteen Year Rule. We understand that the Congressional intent of the addition of Section 529(c)(3)(E) is to introduce flexibility for 529 Plan account owners in using their 529 Plan accounts. Requiring a reset of the Fifteen Year Rule each time an account owner, designated beneficiary or administrative change is made to an account would contravene Congressional intent and excessively restrict the application of the Fifteen Year Rule. These restrictions will result in taxpayer confusion and unnecessarily complicate the application of the new rollover provision.

The Fifteen Year Rule is not predicated on the designated beneficiary or account owner remaining the same during the 15 years prior to distribution. Section 529(c)(3)(C)(i) and (ii) provide that both a rollover and a change in the designated beneficiary of a 529 Plan account will not constitute a taxable distribution from a 529 Plan account. New Code section 529(c)(3)(E) did not amend these rules. In addition, changes in account ownership are governed by state law and may occur, for example, following the death of the account owner. Therefore, CSPN requests that the IRS confirm that each of a rollover from one 529 Plan to another 529 Plan, a change in account owner, and a change of designated beneficiary will not reset the Fifteen Year Rule.

In addition, because of the many changes that can occur during the life of a 529 Plan account, many of which cannot be tracked by the 529 Plan administrators, we believe that the account owner would be the best arbiter for determining the 15-year time period, as the 529 Plan account owner is uniquely positioned to know when the original assets were invested and can easily access supporting account records, regardless of subsequent changes to the account owner, designated beneficiary, 529 Plan, or recordkeeper.

## **II. The Trustee-to-Trustee Transfer to Roth IRA – 5-Year Exclusion Period**

For 529 Plan accounts that have been maintained for fifteen years prior to the distribution, Section 126(a) of the Act [new Code section 529(c)(3)(E)(i)(I)] generally limits the amount that may be distributed in a tax-free rollover from a 529 Plan account to a Roth IRA to an amount that does not exceed the aggregate amount contributed to the program (and earnings attributable thereto) before the 5-year period ending on the date of the distribution (the “Five Year Rule”).

Per current 529 regulations, the industry tracks earnings and basis for the entire account. This earnings and basis information is maintained by 529 Plan recordkeepers, reported by 529 Plans to taxpayers and the IRS on Form 1099-Q (Box 2 Earnings and Box 3 Basis), and is used by taxpayers to calculate federal income taxes due on non-qualified withdrawals from 529 Plan accounts. 529 Plans are not required under existing law to track the information necessary to determine what portion of earnings in the account are attributable to contributions made five years or more prior to the date of distribution. If such tracking would be required, even if 529 Plan recordkeepers were able to develop systems to calculate amounts available for a tax-free rollover to a Roth IRA account, such systems development and implementation would be unduly time-consuming and decidedly cost prohibitive.

While new Code section 529(c)(3)(E) does not impose any new tracking requirements on 529 Plans, CSPN anticipates that account owners and tax professionals will require guidance from the IRS in order to accurately calculate and document compliance with the Fifteen Year Rule and

the Five Year Rule.<sup>2</sup> Therefore, CSPN requests a safe harbor to help ensure that both the Fifteen Year and Five Year Rules are implemented in a manner that promotes efficient and accurate tax compliance and that does not impose unwelcome and costly administrative burdens on 529 Plans or taxpayers.

#### **Five Year Rule (Changes in Account Owners and Beneficiaries)**

Similar to the discussion above regarding the Fifteen Year Rule, the Five Year Rule is not predicated on the designated beneficiary or account owner remaining the same during the periods in question. Therefore, as with the Fifteen Year Rule, CSPN requests that the IRS confirm that neither a change of designated beneficiary nor a change in account owner will reset the Five Year Rule.

#### **Compliance with the Five Year Rule**

CSPN requests a safe harbor that would permit an account owner to use the account value five years or more prior to the 529 Plan to Roth IRA rollover to substantiate compliance with the Five Year Rule. If no contributions have been made in the last five years, CSPN requests that the safe harbor permit an account owner to use the current account value. In both cases, under the proposed safe harbor, the account owner could use the account statement closest in time prior to the applicable five year period.

**Example.** Account owner makes a \$6,000 529 to Roth IRA rollover in July 2024. No other contributions are made during the taxable year 2024 to any other individual retirement plans maintained for the designated beneficiary. The account was opened more than fifteen years before the 2024 rollover. Prior to July 2019, the account owner made aggregate contributions to the account of \$20,000. Under the proposed safe harbor, the account owner could use 529 Plan account statement(s) issued prior to July 2019 to substantiate compliance with the Five Year Rule.

While ultimate responsibility for compliance with the Five Year Rule remains with the account owner, 529 Plans should generally be able to provide historical account statements upon request. In cases where the account in question has been rolled over from one 529 Plan recordkeeper to another 529 Plan recordkeeper, the account owner may have to contact the original 529 Plan for copies of historical account statements if the account owner no longer has copies.

### **III. The Trustee-to-Trustee Transfer to Roth IRA – 529 Plan Administrator to Roth Trustee Reporting Requirements**

Lastly, we'd like to provide insight and request clarification on reporting requirements as laid out below in Section 126(c) of the Act [new Code Section 529(d)(2)]. The section in question includes the following language,

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<sup>2</sup> It should be noted that any future requirements that 529 Plans begin tracking such information would be inconsistent with current interpretive guidance, very costly and unnecessarily burdensome to implement,

*“In the case of any distribution described in subsection (c)(3)(E), the officer or employee having control of the qualified tuition program (or their designee) shall provide a report to the trustee of the Roth IRA to which the distribution is made. Such report shall be filed at such time and in such manner as the Secretary may require and shall include information with respect to the contributions, distributions, and earnings of the qualified tuition program as of the date of the distribution described in subsection (c)(3)(A), together with such other matters as the Secretary may require.”*

Today, 529 Plan-to-529 Plan and 529 Plan-to-ABLE plan direct transfers are reported via Form 1099-Q, which includes the total dollar amount disbursed for the previous calendar year, as well as their associated principal and earnings. CSPN’s recommended updates to Form 1099-Qs to accommodate the new 529 to Roth transfer option were provided in a separate letter, dated June 28, 2023.<sup>3</sup> In addition to tax reporting via Form 1099-Q, the principal and earnings associated with each rollover transaction is provided to the 529 or ABLE Plan receiving the transferred funds. We believe that this existing process meets all necessary requirements for appropriate reporting of 529 Plan-to-Roth IRA Rollovers.

The above language from new Section 529(d)(2) includes reference to reporting to be provided to the trustee of the Roth IRA, including contributions, distributions, and earnings as of the date of distribution. Industry consensus among 529 Plan and Roth IRA service providers is that such information is overinclusive and neither pertinent nor necessary information for the Roth IRA trustee. Surveys of Roth IRA service providers indicate that the only information the Roth IRA trustee requires is the contribution amount and an indication that the funds are coming from a 529 Plan – consistent with today’s industry best practices.

Specifically, Roth IRA service providers expect that the funds coming from a 529 Plan will be treated as a contribution and therefore, breakdown of principal and earnings would not be required. In the event a breakdown of principal and earnings is necessary, 529 Plan service providers also include this information with the transferred funds. In addition, detailed account history, such as contributions and distributions is not generally provided when 529 Plan account assets are rolled over into a 529 Plan account in another 529 Plan, or when a 529 Plan is converted to a new recordkeeper. Therefore, not only is information regarding contributions and withdrawals not needed for the Roth IRA trustee, such information would not be available to the 529 Plan service provider in many instances.

Accordingly, for all the reasons discussed above, CSPN members intend to provide to the Roth IRA trustee only the breakdown of principal and earnings of the distribution, in the same manner currently provided for a 529 Plan to 529 or ABLE Plan rollover.

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<sup>3</sup> See *Letter from Rachel Biar, Nebraska Assistant State Treasurer, NEST 529 College Savings Program Director, and Chairman, College Savings Plans Network to Taina Edlund, Internal Revenue Service and Krishna Vallabhaneni, U.S. Department of the Treasury, dated June 28, 2023.*

Thank you for your consideration of our above recommendations. We look forward to hearing from you at your earliest convenience. For any additional information, you may reach CSPN by contacting Chris Hunter at (202) 630-0064 or [Chris@statetreasurers.org](mailto:Chris@statetreasurers.org).

Sincerely,

A handwritten signature in blue ink that reads "Rachel Biar". The signature is written in a cursive, flowing style.

Rachel Biar  
Nebraska Assistant State Treasurer  
NEST 529 College Savings Program Director  
Chair, College Savings Plans Network