



May 9, 2023

Ms. Carol Weiser
Benefits Tax Counsel
U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

Ms. Rachel Levy
Associate Chief Counsel
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224

Re: SECURE 529 Provisions

Dear Ms. Weiser and Ms. Levy:

The Securities Industry Financial Markets Association (“SIFMA”)¹ would like to request guidance relating to changes to Section 529 of the Internal Revenue Code due to SECURE 2.0 Act of 2022.² We will be submitting an additional letter relating to other provisions of SECURE 2.0 at a later date.

Congress provided for an expansion of the ability to move funds placed in 529 accounts to Roth IRAs. There are certain limitations, including the number of years the funds must be in the account before moved, as well as the number of years any new contributions must have been in the account. We have interpretive questions we would like the IRS to address on both these issues, as well as questions and suggestions with regard to reporting. While this provision is not effective until after December 31, 2023, our members are already receiving many questions from clients due to the press coverage and popularity of the provision and will need time to implement this provision based on the IRS regulations.

¹SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² The Consolidated Appropriations Act, 2023, Division T- SECURE 2.0 Act of 2022, Section 126

I. The 15-year clock should be based on original account inception, as known to the account owner.

The statutory language provides: “In the case of a distribution from a qualified tuition program of a designated beneficiary which has been maintained for the 15-year period ending on the date of such distribution...”

We believe the IRS could provide clarity that the 15-year clock is to be based on the original account inception, which would be indicated by the account owner. This would make it clear that the important aspect is that the account had been preserved for at least 15 years, no matter whether the beneficiary is changed.

This is an important clarification for the IRS to make since some families might have created only one 529 account with the intent to use it for multiple children, while changing the beneficiary based on when payments are due for particular children during their college years. When there are funds at the end, it would be contrary to Congress’ intent to only start the clock once that last child’s last college payment is made. The statutory language makes no reference to restarting the clock when a new beneficiary is named.

It is also important for the IRS to clarify that the individual account owner would be responsible for indicating the year of account inception, since only the individual would have the knowledge. If an owner moves an account from one institution to another, the new institution only knows the date an account was opened, while being unaware of the inception date of the account. Further, many financial institutions have dates by which they purge data and do not maintain those records. Some of these dates are set by other regulators.

Congress was clearly looking to increase the flexibility with regard to 529 accounts, so the IRS should interpret with that goal in mind.

II. The IRS should create a safe harbor with regard to the 5-year provision.

The statutory language provides that the rollover cannot exceed “the aggregate amount contributed to the program (and earning attributable thereto) before the 5-year period ending on the date of the distribution...”

Since contributions are generally made on an ongoing basis with some being made before and some made after the 5-year period, for purposes of tracking the contributions, we would suggest the creation of a safe harbor allowing the individual to use the value of the account on the date of 5 years prior. Simplicity would be the goal here. Consideration could also be given to allow for the greater of the contributions of the years before or the value on that date 5 years ago to address a down market year.

III. Reporting of the transfer should be treated as a direct transfer.

The statutory language provides that the rollover be done as “a direct trustee-to-trustee transfer.”

We would recommend this be reported and treated similarly to how we report a 529 to 529 direct transfer on the 1099-Q. We would provide principal and earnings the same way we do for other distributions, including trustee to trustee transfer. However, this transaction should not be counted against the one Qualified Tuition Plan to Qualified Tuition Plan rollover per 12-month period 529 plan limitation, since these funds should not be similarly tied. On the Roth side, we would treat it as a contribution so that we would be able to determine whether it hits the limit for the year at a particular financial institution. (Note: the individual account owner will have to be responsible since we will not know if they have hit any limits across financial institutions.)

To help savers/investors today, Treasury should clarify that the assets leaving a 529 plan will be processed and reported as a direct transfer and the assets going into the Roth will be processed and reported as a contribution, subject to annual Roth IRA contribution limits.

IV. Individuals should not need earned income to move the assets.

The statutory language references an annual limitation. However, it is unclear as to whether an individual needs to have earned income to be able to move the money from the 529 account to the Roth IRA. Complicating that issue is whether or not one would look to the earned income of the account holder or the beneficiary who will become the Roth IRA account owner.

V. Conclusion

Thank you again for your time, and we would be happy to follow-up with a dialogue to help resolve in the best way to meet Congress’ intent of allowing increased flexibility for 529 account funds. Please contact me at 202-962-7329 or lbleier@sifma.org.

Sincerely,

Lisa J. Bleier

Lisa J. Bleier
Head of Wealth Management, Retirement and State Government Relations