



SUBMITTED VIA EMAIL

June 3, 2024

Andres Garcia
Internal Revenue Service
Room 6526
1111 Constitution Avenue NW
Washington, DC 20224

Re: Agency Collection Activities; Requesting Comments on Form 1099-Q (OMB Control No. 1545-1760)

Dear Mr. Garcia:

The College Savings Foundation (CSF)¹ appreciates the opportunity to comment on the Internal Revenue Service's (IRS) request for comments on the Form 1099-Q, Payments from Qualified Education Programs (Under Sections 529 and 530).² Among other things, the IRS requests "ways to enhance the quality, utility, and clarity of the information to be collected."

We are writing to request that the IRS make modifications to Form 1099-Q to reflect changes to Internal Revenue Code (Code) section 529 made by section 126 of the SECURE 2.0 Act of 2022 (SECURE 2.0). Under section 126, effective in 2024, amounts transferred from a 529 plan account to a Roth IRA maintained for the 529 plan account's designated beneficiary are exempt from taxation – including the 10% additional tax penalty for a non-qualified distribution – up to specified limits if certain conditions are met.

CSF believes that this new provision encourages families to save for college in a 529 plan because it addresses the concerns many families had about the ability to use 529 plan savings for another purpose if they are not used for qualified higher education expenses. But in order for section 126 to be fully operational and to ensure smooth administration of these new rules, it is

¹ CSF is a not-for-profit organization with the mission of helping American families achieve their education savings goals by working with public policy makers, media representatives, and financial services industry executives in support of 529 plans. CSF serves as a central repository of information about college savings programs and trends and as an expert resource for its members as well as for representatives of state and federal government, institutions of higher education, and other related organizations and associations. CSF members include state 529 plans; investment managers; broker-dealers; law firms; accounting and consulting firms; and non-profit agencies that participate in the sponsorship or administration of 529 plans.

² 89 Fed. Reg. 23,084 (Apr. 3, 2024).

critical that the IRS develop and release updated draft and final versions of the Form 1099-Q as soon as possible to reflect distributions from a 529 plan account to a Roth IRA pursuant to section 126. Because the Form 1099-Q was last updated nearly five years ago, it does not currently account for such distributions. Moreover, because section 126 is effective for distributions made after December 31, 2023, these types of distributions are already occurring, all while the Form 1099-Q lacks a proper reporting mechanism.

In addition, certain provisions of section 126 – particularly the requirement that a distribution to a Roth IRA cannot exceed the aggregate amount contributed to the 529 plan account before the five-year period ending on the date of the distribution – present reporting and recordkeeping challenges for 529 plan administrators, including with respect to information that the Treasury Secretary may require to be reported in connection with the Form 1099-Q. In light of these challenges, CSF requests that the IRS not require 529 plans to track or report additional data that is not *already* typically collected and maintained by 529 plans.

Request #1 – Update the Form 1099-Q to reflect SECURE 2.0 section 126

CSF requests that the IRS prioritize releasing draft and final versions of an updated Form 1099-Q as soon as possible to reflect distributions under section 126 of SECURE 2.0. The current Form 1099-Q was last revised in 2019,³ and therefore obviously fails to reflect the newly permitted 529 plan account distributions to a Roth IRA.

We believe our request could be accomplished through a relatively straightforward change to the Form 1099-Q. On the current Form, a taxpayer checks Box 4 to report a trustee-to-trustee transfer. But this only applies to transfers from one 529 plan account to another, from one Coverdell education savings account to another, from a Coverdell account to a 529 plan account, or from a 529 plan account to an ABLE account. The addition of a similar, but distinct, new box on Form 1099-Q for the program administrator (or other payer) to check to report a distribution from a 529 plan account to a Roth IRA would be sufficient.

Request #2 – No additional information is required on Form 1099-Q under SECURE 2.0 section 126

SECURE 2.0 includes certain conditions that apply to tax-free transfers from 529 plan accounts to Roth IRAs. In particular:

- Code section 529(c)(3)(E)(i)(I) 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 five-year period ending on the date of the distribution.”
- Code section 529(c)(3)(E)(i) provides that the account must have been maintained for the 15-year period ending on the date of the distribution.
- Code section 529(c)(3)(E)(ii)(I) provides that tax-free distributions only apply to so much of the distribution “as does not exceed the amount applicable to the designated

³ See <https://www.irs.gov/pub/irs-pdf/f1099q.pdf>.

beneficiary under section 408A(c)(2) for the taxable year (reduced by the amount of aggregate contributions made during the taxable year to all individual retirement plans maintained for the benefit of the designated beneficiary).”

- Code section 529(c)(3)(E)(ii)(II) provides an aggregate limitation of \$35,000.

As amended by SECURE 2.0, Code section 529(d)(2) provides that, in the case of a distribution that qualifies as a tax-free transfer to a Roth IRA, “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,” which must include information regarding contributions, distributions, and earnings of the 529 plan account as of the date of the distribution, as well as other matters that the Treasury Secretary may require.

The various conditions noted above reflect information that the 529 program administrator will not have in a complete way. For example, with respect to the “five-year rule,” while 529 plans do track the basis and earnings portions of each account, as well as aggregate contributions and distributions, they do not necessarily track this information on a year-by-year basis. Similarly, because of various recordkeeping conventions, and the fact that individuals can transfer 529 accounts from one state to another, 529 program administrators will not know for sure whether an account has been maintained for 15 years. Finally, the 529 program administrator cannot know if the annual or lifetime limit has been exceeded—only the account beneficiary can know that. All of this information should be in the possession of the 529 account owner.

As a practical matter, 529 plans simply had not tracked these types of information in the years prior to the enactment of SECURE 2.0. As a result, 529 plan administrators would be unable to acquire the necessary information, for example, to ensure an account holder’s compliance with the five-year rule for distributions to a Roth IRA that would require tracking of such prior years. Moreover, any new requirements for 529 plans to begin tracking such data going forward would be expensive and administratively burdensome because it would require 529 plans to modify their existing recordkeeping systems to accommodate such requirements. Given these clear logistical challenges, in connection with the recordkeeping and reporting requirements under section 126 of SECURE 2.0, CSF requests that 529 plans not be required to track or report new, additional information that plans do not already track.

Form 1099-Q already requires that 529 program administrators report (a) the gross distribution; (b) the earnings, and (c) the basis. This information could be helpful to the extent that the account beneficiary later takes a non-qualified distribution from the Roth IRA. Thus, we do not believe that any additional reporting should be required other than noting on the form that the distribution was paid in a direct trustee-to-trustee transfer to a Roth IRA.

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Thank you for your consideration of our comments on the Form 1099-Q and related reporting requirements under section 126 of SECURE 2.0. If you have any questions, or if it would be helpful to discuss our requests, please contact me or CSF's outside counsel Barbara Pate (bapate@davis-harman.com) or Michael Hadley (mlhadley@davis-harman.com) of Davis & Harman LLP.

Sincerely,

A handwritten signature in black ink that reads "Chris McGee". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Chris McGee
Chair
College Savings Foundation