October 7, 2013

By Electronic Delivery and Overnight Courier

Ms. Yvette Lawrence
Internal Revenue Service
Room 6129
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: The College Savings Foundation and the College Savings Plan Network Joint Response to Comment Request for Reduction of Paperwork and Respondent Burden for 529 Plans
OMB Number 1545-1614
Regulation Project Number: REG-106177-97

Dear Ms. Lawrence:

The College Savings Foundation (CSF) and the College Savings Plans Network (CSPN) are national not-for-profit organizations which work with their members to enhance 529 college savings plans (529 Plans or Plans) and assist American families to plan and save for higher education. CSF and CSPN members include state 529 Plans, investment managers, broker-dealers, other governmental organizations, law firms, accounting and consulting firms, and non-profit agencies that participate in the sponsorship or administration of 529 Plans.

529 Plans are a critical tool in helping families save for college. Over 5.7 million U.S. households were saving for college in 529 Plans as of December 31, 2012. There were over 11 million 529 accounts as of that same date with over 800,000 new accounts opened in the 18 month period between October 2011 and April 2013. Given the number of existing 529 accounts, the growth in new accounts, and the critical importance of saving for college, we appreciate the opportunity to comment on how 529 Plans can become more efficient and easier to use by reducing, where appropriate, their paperwork and administrative requirements. We

believe two areas where a significant impact could be made involve §529's aggregation requirement and its limit on annual investment direction changes.

**Aggregation Requirement**

Section 529 (c)(3)(A) provides that any distribution from a qualified tuition program, unless excluded from income within the provisions of §529, are included in the gross income of the distributee in the manner provided in §72. Section 72 provides the method for determining the ratio of any distribution between contributions (investment) and earnings (expected return). That calculation would be relatively simple for 529 Plans if determined with respect to a single investment or portfolio or program within a Plan. However, §529(c)(3)(D) provides that, to the extent provided by the Secretary of the Treasury (the Secretary), **all** qualified tuition programs for which a person is a designated beneficiary shall be treated as one program and except as provided by the Secretary, all distributions in a taxable year are treated as one distribution. The language used in the statute provides flexibility for the Secretary to regulate the manner in which aggregation is applied.

Applicable proposed regulations provide a definition of the "earnings ratio" (§1.529-1(3)) and provide the method for computing taxable earnings (§1.529-3(b)). Section 1.529-3(d) provides for aggregation of accounts for purposes of calculating the earnings portion of any distribution, resulting in a pro rata allocation of earnings across multiple accounts and programs within a single Qualified Savings Tuition Plan (no aggregation is required across programs in different states, only within a single state). The result is that multiple accounts for the same beneficiary maintained in a state's 529 Plan, whether in multiple portfolios in a single program or in more than one of that state's 529 programs, are treated as a single account for purposes of calculating the earnings portion of any distribution, with contributions and earnings (or losses) aggregated per beneficiary across all accounts and any distributions in a taxable year are similarly aggregated and the earnings ratio determined by reference to all accounts, even if distributions came from only one account.

Distribution aggregation and the calculation of the earnings ratio and resulting earnings for purposes of 1099-Q reporting is cumbersome, difficult to calculate and difficult to communicate to customers and represents an administrative burden on 529 Plans. The result is that reported earnings may have no relationship to the actual earnings ratio on any given distribution. Finally, the majority of distributions are for qualified higher education expenses and therefore distributions are excluded from gross income, making the aggregated earnings calculation irrelevant and unnecessary. We can perceive no tax avoidance or other inappropriate behaviors that are discouraged by the distribution aggregation rule, as none exist in determining which account should take a distribution. Given this and the significant administrative burden aggregation imposes, we would ask the Secretary to eliminate the requirement.

**Limitations on Investment Direction Changes**

As originally enacted, §529 did not permit an account owner any investment direction changes over the life of that §529 account. As a result, a parent who chose to invest his infant's 529 college savings into an aggressive portfolio when he opened the §529 account was prohibited from moving to more conservative investment options for that account as his child grew older. As a consequence, states developed age-based evolving portfolios which included periodic transitions of portfolios to more conservative allocations as the beneficiary approached college age. These options remain popular choices in 529 Plans.

The statutory restriction was eased slightly in 2001 when 529 account owners were permitted one investment direction change per year (IRS Notice 2001-55). Several years later, the IRS temporarily permitted two investment changes per year, but limited that action to calendar year 2009 (IRS Notice 2009-1). Language in the Notice indicated the timing was based on pending adoption of final 529 regulations, which has not occurred. As a result, since 2010, 529 account owners have again been limited to a single investment change per year.

There are significant penalties for an account owner who elects to do more than one investment direction change per year. Those doing so are deemed to have made a nonqualified distribution, the consequences for which include a 10% federal tax penalty on the account's total earnings and the earnings themselves being subject to federal and state taxes. Unfortunately, without controls that require manual operations among multiple programs in a single state, multiple investment changes can happen inadvertently.

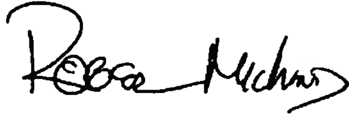
Each state's 529 Plan must monitor the investment direction activity of each account in each program, resulting in increased recordkeeping and other administrative burdens for 529 Plans. Equally important, the restriction prevents account owners from having the same investment selection flexibility enjoyed by other types of savings and investment accounts, including retirement accounts.

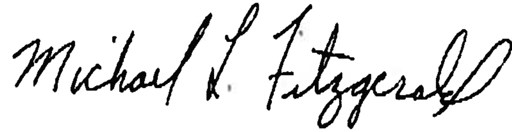
It is anticipated that in the near future a bill will be filed in Congress which proposes to increase the number of annual investment changes from one to four. Similar bills have been introduced in prior years. This increase is intended to benefit 529 account owners by giving them more flexibility in the investment of the funds in their college savings accounts. However, the elimination of the investment direction limitation requirement altogether by the Secretary would have the positive effect of providing those account owners with increased investment selection flexibility found in other types of investment accounts while at the same time eliminating the information collection and record keeping burdens placed upon 529 Plans by this requirement. In addition, this same bill will also propose the elimination of the aggregation requirement described above.

Again, we appreciate the opportunity to make saving for college more efficient and customer-friendly by reducing or eliminating paperwork and administrative requirements

associated with §529's aggregation requirement and investment change limitation. We look forward to working with you on these important initiatives. You may reach CSF by calling Kathy Hamor at (703) 351-5091 and CSPN by calling Chris Hunter at (859) 244-8177.

Sincerely,





Roger Michaud
Chairman,
College Savings Foundation

Hon. Michael L. Fitzgerald
Treasurer of Iowa and
Chairman, College Savings Plans Network