



Memorandum

To: Senate Committee on Economic Development, Housing and General Affairs
From: Thomas A. Little, Esq., General Counsel, Vermont Student Assistance Corporation 
Date: January 30, 2020
Re: SECURE Act Impact on Vermont's Higher Education Investment Plan

In late December 2019, the President signed the Setting Every Community Up for Retirement Enhancement (SECURE) Act into law, which aims to improve savings habits in the United States. The legislation expands the benefits of 529 college savings plans, including adding student loan repayments and cost of apprenticeship programs as qualified expenses. The new law applies to 529 plan distributions made after December 31, 2018.

Student Loan Repayment. The SECURE Act allows families to take tax-free 529 plan distributions for student loan repayment. Principal and interest payments toward a qualified education loan will be considered qualified 529 plan expenses. However, the portion of student loan interest that is paid for with tax-free 529 plan earnings is not eligible for the student loan interest deduction.

The law includes an aggregate lifetime limit of \$10,000 in qualified student loan repayments per 529 plan beneficiary and \$10,000 per each of the beneficiary's siblings. Siblings may include a brother, sister, stepbrother or stepsister. A 529 plan account owner may change the 529 plan beneficiary at any time without tax consequences.

Many families use a combination of income, 529 plan savings and student loans to pay for college. Since there are no time limits imposed on 529 plans, the student may keep contributing to a 529 plan throughout college or after graduation and use any leftover funds to repay student loans tax-free.

The expansion also presents an opportunity for grandparents who want to help a grandchild pay for college without affecting financial aid eligibility. Distributions from a grandparent-owned 529 plan are considered untaxed student income on the Free Application for Federal Student Aid (FAFSA) and can reduce a student's financial aid package by up to 50% of the value of the distribution. Grandparents can avoid this by waiting until January 1 of the student's sophomore year of college (when it will no longer affect untaxed income on the FAFSA) to take a 529 plan distribution or wait until the student graduates to pay down their student loans.

Apprenticeships. The SECURE Act also allows 529 plans to be used to pay for apprenticeship programs. To be considered a qualified 529 plan expense, the apprenticeship program must be registered and certified with the Secretary of Labor under section 1 of the National

Apprenticeship Act. The Department of Labor provides a search tool to find out if a particular apprenticeship program is eligible. The Vermont Department of Labor also lists the eligible programs on its website.

Apprenticeship programs are offered by employers and provide on-the-job training and instruction to prepare workers for a particular career. Apprenticeships are used in many industries, such as construction, manufacturing, health care, information technology, energy and logistics. According to the U.S. Department of Labor, apprentices earn an average starting wage of \$15.00 per hour.

Some apprenticeship programs offer college credit through a community college or a four-year college. Costs of apprenticeships vary by the employer and type of job training. In some cases, the employer covers all or a portion of the instruction. Under the SECURE Act, tax-free distributions from 529 plans can be used to pay for the following expenses associated with apprenticeship programs:

- Fees
- Textbooks
- Supplies
- Equipment, including tools required for trades

Source: Savingforcollege.com

These two new purposes are not contemplated in the Vermont statute that created Vermont's 529 savings plan, 16 V.S.A. §§ 2857-2879 (attached). Our statute contains definitions of "postsecondary education costs" and "approved postsecondary education institution" that are independent of and different than the federal statute's definitions. Accordingly, in order for there to be no adverse consequences under Vermont tax laws (specifically, recapture of the Vermont income tax credit for contributions to a Vermont 529 plan), the Vermont statute needs to be amended. VSAC is looking at this together with the Vermont Department of Taxes. The Department, in turn, has been discussing the revenue question with the Joint Fiscal Office, and they have reached a consensus estimate of a not more than \$100,000 increase in use of the tax credit from such a statutory change.

Subchapter 7: Vermont Higher Education Investment Plan

§ 2875. Findings and intent

- (a) The general welfare and well-being of the State are directly related to the educational levels and skills of its citizens.
- (b) It is the policy of the State to advance postsecondary education opportunities by using the State's limited resources in an effective, efficient, and equitable manner.
- (c) Given the cost of postsecondary education to students, families, and the taxpayers of the State, it is in the public interest of the State to support supplemental means that enable its citizens to pursue their educational aspirations.
- (d) It is a valid and vital public purpose to create a means of encouraging the savings and investing of funds for future postsecondary education, in compliance with the Internal Revenue Code of 1986, as amended.
- (e) The implementation of the Vermont Higher Education Investment Plan as provided by this subchapter furthers this public purpose. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2001, No. 58, § 4, eff. June 16, 2001; 2013, No. 92 (Adj. Sess.), § 189, eff. Feb. 14, 2014.)

§ 2876. Definitions

As used in this subchapter, except where the context clearly requires another interpretation:

- (1) "Beneficiary" means any individual designated by a participation agreement to benefit from payments for postsecondary education costs at an institution of postsecondary education.
- (2) "Benefits" means the payment of qualified postsecondary education costs on behalf of a beneficiary by the Corporation's Investment Plan during the beneficiary's attendance at an institution of postsecondary education.
- (3) "Corporation" means Vermont Student Assistance Corporation.
- (4) "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended, together with the regulations promulgated thereunder.
- (5) "Postsecondary education costs" means the qualified costs of tuition and fees and other expenses for attendance at an approved postsecondary education institution.
- (6) "Approved postsecondary education institution" means a postsecondary education institution as defined in section 2822 of this title.
- (7) "Vermont Higher Education Investment Plan" or "Investment Plan" means the program created pursuant to this subchapter.

(8) "Participant" means a person who has entered into a participation agreement pursuant to this subchapter for the advance payment of postsecondary education costs on behalf of a beneficiary.

(9) "Participation agreement" means an agreement between a participant and the Corporation, pursuant to and conforming with the requirements of this subchapter. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2001, No. 58, § 4, eff. June 16, 2001; 2019, No. 51, § 16, eff. Jan. 1, 2019.)

§ 2877. Vermont Higher Education Investment Plan created

(a) There is created a program of the State to be known as the Vermont Higher Education Investment Plan to be administered by the Vermont Student Assistance Corporation as an instrumentality of the State.

(b) In order to establish and administer the Investment Plan, the Corporation, in addition to its other powers and authority, shall have the power and authority to:

(1) Develop and implement educational programs and related informational materials for participants and their families. Special efforts shall be made to contact families with young children and to reach individuals whose access to higher education opportunities has been limited.

(2) Enter into agreements with any institution of postsecondary education, the State or any federal or other agency or entity as required for the operation of the Investment Plan pursuant to this subchapter.

(3) Accept any grants, gifts, legislative appropriations, and other moneys from the State, any unit of federal, State, or local government or any other person, firm, partnership, or corporation for deposit to the account of the Investment Plan.

(4) Invest the funds received from participants in appropriate investment vehicles, including education loans made by the Corporation.

(5) Enter into participation agreements with participants.

(6) Develop and use two or more types of participation agreements to provide a range of investment structures.

(7) Make payments to institutions of postsecondary education on behalf of beneficiaries pursuant to participation agreements.

(8) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in this subchapter and the rules and regulations adopted by the Corporation.

(9) Make provision for the payment of costs of administration and operation of the Investment Plan subject to the limitations on charges on participation agreements established in subdivision 2878(5) of this title.

(10) Adopt rules and regulations to implement this subchapter in conformance with the Internal Revenue Code and other applicable law.

(11) Effectuate and carry out all of the powers granted by this subchapter, and have all other powers necessary to carry out and effectuate the purposes, objectives, and provisions of this subchapter pertaining to the Investment Plan Program, including the power to:

(A) carry out studies and projections in order to advise participants regarding present and estimated future postsecondary education costs and levels of financial participation in the Plan required in order to enable participants to achieve their educational funding objectives; and

(B) procure insurance, guarantees, or other protections against any loss in connection with the assets or activities of the investment plan. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2001, No. 58, § 4, eff. June 16, 2001; 2013, No. 92 (Adj. Sess.), § 190, eff. Feb. 14, 2014.)

§ 2878. Participation agreements for Investment Plan

The Corporation shall have the authority to enter into Investment Plan participation agreements with participants on behalf of beneficiaries pursuant to the provisions of this subchapter, including the following terms and agreements:

(1) A participation agreement shall stipulate the terms and conditions of the Investment Plan in which the participant makes deposits.

(2) A participation agreement shall specify the method for calculating the return on the deposit made by the participant, which may be a variable or adjustable rate of return.

(3) The execution of a participation agreement by the Corporation shall not guarantee in any way that postsecondary education costs will be equal to projections and estimates provided by the Corporation or that the beneficiary named in any participation agreement will be admitted to an institution of postsecondary education.

(4) A participation agreement shall clearly and prominently disclose to participants the risks associated with depositing monies with the Corporation.

(5) Participation agreements shall be organized and presented in a way and with language that is easily understandable by the general public. A participation agreement shall clearly and prominently disclose to participants the existence of any load charge or similar charge assessed against the accounts of the participants for administration, operation, or services. No fee or similar charge may be imposed with regard to an investment managed by the Corporation. Any fee, load, or similar charge with regard to any investment not managed by the Corporation shall be no greater than required to administer the investment. The cost of originating and servicing any education loans made or acquired pursuant to participation agreements shall not be considered as load charges or similar charges.

(6) Any investment advisory or management contract used with respect to a participation agreement shall be competitively bid pursuant to guidelines established by the Secretary of Administration. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2001, No. 58, § 4, eff. June 16, 2001.)

§ 2878a. Participation agreements for Investment Plan; Individual Development Investment Accounts

The Corporation may participate in the Individual Development Investment Program established under 33 V.S.A. § 1123, in accordance with the rules of the Agency of Human Services adopted thereunder, in connection with an individual or family who, at the time of depositing funds into an account created pursuant to a Vermont Higher Education Investment Plan, receives public assistance or is otherwise an eligible saver under 33 V.S.A. § 1123. (Added 1999, No. 147 (Adj. Sess.), § 1a; amended 2001, No. 58, § 4, eff. June 16, 2001.)

§ 2879. Investment and payments

All money paid by a participant in connection with participation agreements shall be deposited as received and shall be promptly invested by the Corporation. Deposits and earnings thereon accumulated on behalf of participants in the Investment Plan may be used, as provided in the participation agreement, for payments to any institution of postsecondary education. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2001, No. 58, § 4, eff. June 16, 2001.)

§ 2879a. Cancellation of participation agreements

(a) Any participant may cancel a participation agreement at will, and any return of funds from the participant's account shall be subject to terms and conditions established by the Corporation, provided that any penalties levied as a result comply with the provisions of the Internal Revenue Code or Title 32 relating to Investment Plans.

(b) The Corporation may provide by rule that no termination penalty shall apply in certain circumstances. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2001, No. 58, § 4, eff. June 16, 2001; 2019, No. 51, § 17, eff. Jan. 1, 2019.)

§ 2879b. Effect of payments in computation and determination of financial aid need

Amounts available for the payment of postsecondary education costs pursuant to the Investment Plan shall be considered family assets of the beneficiary in determining need and eligibility for student aid as determined by applicable law. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2001, No. 58, § 4, eff. June 16, 2001.)

§ 2879c. Tax exemption

(a) The assets of the Vermont Higher Education Investment Plan held by the Corporation and the assets of any similar plan qualified under Section 529 of the Internal Revenue Code and any income therefrom shall be exempt from all taxation by the State or any of its political subdivisions. Income earned or received from the Fund by any participant or beneficiary shall not be subject to State income tax and shall be eligible for any benefits provided in accordance

with the Investment Plan provisions of the Internal Revenue Code. The exemption from taxation under this section shall apply only to assets and income maintained, accrued, or expended pursuant to the requirements of the Vermont Higher Education Investment Plan, the provisions of this subchapter, and the applicable provisions of the Internal Revenue Code. No exemption shall apply to assets and income expended for any other purposes.

(b) Contributions to an account held under the Vermont Higher Education Investment Plan shall be eligible for a credit against Vermont income tax as provided under 32 V.S.A. § 5825a. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. Jan. 1, 1999; amended 2001, No. 58, § 4, eff. June 16, 2001; 2003, No. 65, § 1.)

§ 2879d. Property rights to assets in the Plan

The assets of the Vermont Higher Education Investment Plan shall at all times be preserved, invested, and expended solely and only for the purposes set forth in this chapter and in accordance with the participation agreements, and no property rights therein shall exist in favor of the State. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2001, No. 58, § 4, eff. June 16, 2001.)

§ 2879e. Construction and application

This subchapter shall be construed liberally in order to effectuate its legislative intent. The purposes of this subchapter and all provisions of this subchapter with respect to powers granted shall be broadly interpreted to effectuate such intent and purposes and not as to any limitation of powers. This subchapter shall be interpreted and enforced in a manner that shall achieve this public purpose in compliance with the applicable provisions of the Internal Revenue Code, except to the extent the Code is inconsistent with the provisions of 32 V.S.A. § 5825a. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2019, No. 51, § 18, eff. Jan. 1, 2019.)

§ 2879f. Annual reports

The Corporation shall review, on an annual basis, the financial status of the Program and the participation rate in the Program. The Corporation shall also review the continued viability of the Program and the administration of the Program by the Corporation. (Added 1997, No. 79 (Adj. Sess.), § 1, eff. July 1, 1997; amended 2009, No. 33, § 38.)