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# 529 Rollover Opportunities

As described in Section 529 of the Internal Revenue Code ("Code"), a 529 plan is a tax-advantaged state-sponsored plan designed to help individuals save for education by providing tax-free investment growth of after-tax contributions and tax-free withdrawals of principal and earnings for qualified education expenses. There are two different types of 529 plans: prepaid tuition plans and savings plans.

Ten states currently offer prepaid tuition plans, which allow participants to prepay tuition and fees at today's rates, effectively "locking in" prices at eligible universities. An account owner can purchase up to five years of tuition for a beneficiary, which is paid to the university when the beneficiary enrolls. However, these plans can be very restrictive, and the funds are often not transferable if the beneficiary elects to attend an out-of-network university. By contrast, 49 states and Washington, D.C. currently offer a savings plan, the more traditional type of 529 plan. In a savings plan the contributions are invested, and the total account balance depends on contributions paid in and the performance of the underlying investments.

In December 2022 Congress passed the *Setting Every Community Up for Retirement Enhancement 2.0 Act of 2022* ("SECURE 2.0") in an effort to improve Americans' retirement savings. Before SECURE 2.0, rollovers were subject to tax penalties because they were not "qualified educational expenses." SECURE 2.0 amended Code Section 529 to permit 529 plan beneficiaries of long-standing 529 plans to roll over up to $35,000 over the course of their lifetimes into Roth IRAs. This new rollover feature has several limitations. First, such rollovers are still subject to Roth IRA annual contribution limits. Second, the 529 plan must have been open for a minimum of 15 years prior to the rollover. Finally, the rollover amount cannot include any amounts contributed to the 529 plan in the preceding five-year period.

The 529 rollover provision seeks to enhance adoption and use of 529 plans, as many people delayed or declined to fund 529 plans out of fear that those funds would be trapped in the 529 accounts. Now account holders have an incentive to invest more toward education savings, with an option to avoid the penalty if, for example, the beneficiary does not pursue higher education.

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Since SECURE 2.0, various states have considered and adopted expanded 529 provisions. States can impose more stringent restrictions on contributions and rollovers than federal law requires. For example, in Nebraska, the total contribution limit for the state's 529 plan (Nebraska Educational Savings Plan Trust) is $500,000, and Nebraska has already amended its laws to allow 529 plan funds to be rolled over into the Roth IRAs of the 529 plans' beneficiaries.

States may also implement incentives that encourage employers to contribute to individuals' future education costs. For example, Nebraska offers an Employer Matching Contribution Incentive Program, which provides incentive payments to employers that make matching contributions to their employees' 529 accounts. Employers may receive a payment equal to 25% of their total eligible contributions, up to $2,000 per contributing employee. If you have questions about how 529 rollover provisions operate or other 529 plan questions, contact a member of Kutak Rock's Employee Benefits and Executive Compensation Group.