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New IRS SECURE 2.0 Act Guidance

Article By:

B. David Joffe

Allison Richter

The Internal Revenue Service (IRS) recently published Notice 2024-2, which provides guidance on several sections of the SECURE 2.0 Act of 2022. This article highlights some of the more significant changes affecting retirement plan sponsors.

Automatic Enrollment

Under the act, 401(k) and 403(b) plans established after December 29, 2022, must automatically enroll participants in the plan when they become eligible, and the plan must include auto-escalation provisions unless it meets an exception. These provisions of the act apply to plan years beginning after December 31, 2024. The notice addresses questions about which cash or deferred arrangements (CODAs) are affected by this requirement. In general, CODAs established prior to December 29, 2022, are exempt. According to the notice, a CODA is considered established on the date the plan terms providing for the CODA are initially adopted, regardless of the effective date. The notice explains the application of the requirement with respect to merged plans. The notice also addresses how related rules apply to 403(b) plans, starter 401(k) deferral-only arrangements, and safe harbor deferral-only plans.

Early Withdrawals for Terminal Illnesses

The act waives the penalty on early retirement plan withdrawals made after December 29, 2022, for individuals with a terminal illness. According to the notice, while the act provides for the exception to the 10% penalty, it does not provide for an exception to the distribution restrictions under 401(k) and 403(b). Therefore, to be eligible for this option, an individual must already be eligible for an in-service distribution, such as a disability or hardship distribution. The notice also details the certification process for determining whether an employee has a terminal illness, noting that self-certification is not sufficient, and it affirms that permitting these types of distributions is optional for plans.

Cash Balance Plans

Under the act, for plan years beginning after December 29, 2022, a cash balance plan with variable interest crediting rates may use a projected interest crediting rate that is “reasonable” but not more

than 6%. The notice explains that the effect of this requirement is that cash balance plans with a variable interest crediting rate providing pay credits that increase with a participant's age or service no longer risk running into a potential anti-backloading issue if that interest crediting rate falls below a certain point. The notice also explains that a timely prospective amendment making certain changes to the interest crediting rate will not violate anti-cutback rules. According to the notice, these provisions of the act do not affect statutory hybrid plans that are not cash balance plans.

Correction Safe Harbor for Missed Deferrals

The notice clarifies the safe harbor for missed deferrals in plans that have an automatic contribution feature. Generally, to meet the safe harbor, errors must be corrected prior to nine and a half months after the end of the plan year in which the error occurred or, if the employee reports the error sooner, the second month after the month of notification. The notice addresses which errors are covered by the safe harbor and how to correct the errors. According to the notice, matching contribution errors must generally be corrected within six months from when correct deferrals begin, or within the existing three-year correction period for errors occurring before 2024. The notice also explains how the effective date with respect to an implementation error is determined, noting that the date may vary based on the date the error occurs, the date compensation is paid, whether the employee notifies the plan sponsor of the error, and whether the plan year is a fiscal year or a calendar year. Additionally, the notice describes how a plan sponsor may correct an implementation error and clarifies that an error may be corrected with respect to an individual even if the individual terminates employment before corrected deferrals would otherwise have begun.

Designated Roth Contributions

The act allows a qualified plan, 403(b) plan, or governmental 457(b) plan to permit employees to designate employer matching or nonelective contributions as Roth contributions. Student loan matching contributions may also be designated as Roth contributions. Matching and nonelective contributions designated as Roth contributions are not excludable from the employee's income and must be 100% vested when made. These provisions of the act apply to contributions made after December 29, 2022. The notice devotes substantial attention to addressing key implementation issues, including eligibility, vesting, and reporting requirements and how employer Roth contributions will be taxed. For example, designated Roth matching contributions are excluded from wages for purposes of federal income tax withholding, Federal Insurance Contributions Act (FICA), and Federal Unemployment Tax Act (although different FICA rules apply to governmental plans). The contributions should be reported on Form 1099-R as an in-plan Roth rollover for the year the contribution is made. The notice also clarifies that a qualified Roth contribution program may include every type of designated Roth contribution. The notice clarifies that a separate account only for employer Roth contributions may be rolled over into another Roth account or Roth individual retirement account (IRA), and these Roth contributions are not counted under Code Section 415 safe harbor definitions of compensation.

Amendment Deadline

Previously, under the act, plan amendments had to be made by the end of the 2025 plan year (and the 2027 plan year in the case of governmental plans and collectively bargained plans), provided the plan operates in accordance with such amendments as of the effective date of a requirement or amendment. Plan amendment deadlines under the Setting Every Community Up for Retirement Enhancement Act of 2019, the Coronavirus Aid, Relief, and Economic Security Act, and the Taxpayer

Certainty and Disaster Tax Relief Act of 2020 were also aligned to these new dates. The notice extends the deadline for these plan amendments as follows:

- Qualified plans: to December 31, 2028, for collectively bargained plans; to December 31, 2029, for governmental plans; and to December 31, 2026, for all other qualified plans.
- 403(b) plans: to December 31, 2028, for collectively bargained plans of a tax-exempt organization; to December 31, 2029, for plans maintained by a public school; and to December 31, 2026, for all other 403(b) plans.
- Eligible governmental plans: to the later of December 31, 2029, or, if applicable, the first day of the first plan year beginning more than 180 days after the date of notification by the secretary of the Treasury that the plan was administered in a manner that is inconsistent with the requirements of Section 457.

Conclusion

The notice provides important clarifications to some key provisions of the act and addresses significant implementation issues. The Treasury Department and the IRS continue to analyze the act and further guidance is anticipated. Comments regarding Notice 2024-2 need to be submitted in writing by February 20, 2024.

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