

**MEMO# 35218**

March 28, 2023

## **ICI Sends Letter to Treasury and IRS Seeking Guidance on SECURE 2.0 Act**

[35218]

March 28, 2023

TO: ICI Members  
529 Plan Advisory Committee  
Pension Committee  
Pension Operations Advisory Committee  
SUBJECTS: 529 Plans  
Pension  
Tax RE: ICI Sends Letter to Treasury and IRS Seeking Guidance on SECURE 2.0 Act

ICI submitted the attached letter to Treasury and IRS requesting guidance and relief relating to the SECURE 2.0 Act, which was signed into law on December 29, 2022 and makes several changes to the rules for retirement plans, IRAs and 529 plans.[\[1\]](#) In the letter, we request guidance and/or relief with respect to those changes identified by our members as having the greatest need for immediate action by Treasury and IRS.

From the over 90 provisions in the SECURE 2.0 Act, the letter focuses on the following provisions:

- Roth SIMPLEs/SEPs Permitted (§601). To enable Roth SIMPLE and SEP IRAs, the letter requests updated model forms, guidance on tax implications of Roth employer contributions, and guidance related to a drafting error that affects the ability to make separate Roth IRA contributions.
- Roth Employer Contributions Permitted (§604). To enable Roth employer contributions to defined contribution plans, the letter requests guidance on various tax implications such as income tax withholding and the application of Roth holding period rules, as well as guidance on whether partially vested employees may elect Roth treatment.
- Roth Catch-up Contributions (§603). The letter recommends guidance to address a drafting error that will prevent catch-up contributions beginning in 2024; guidance on whether certain contributions can be later recharacterized as Roth catch-up contributions for purposes of compliance with other tax-qualified plan rules; and confirmation that other types of special catch-up contributions are not subject to the Roth requirement.
- Increased Age for Beginning Required Minimum Distributions (RMDs) (§107).[\[2\]](#) The letter requests specific relief for distributions already taken this year that may have been treated as RMDs pursuant to prior law, and an updated model 402(f) notice to

reflect the new required beginning age and other changes.

- Enhanced Plan Start-up Credit (§102). The letter requests confirmation that partners and sole proprietors are employees for purposes of determining the new contribution-based credit.
- Terminal Illness Distributions (§326). The letter requests guidance permitting reliance on self-certification of eligibility for terminal illness distributions and guidance on whether plan participants may receive in-service terminal illness distributions if their plan allows.
- IRA Charitable Distributions (§307). The letter requests guidance on whether the new \$50,000 limit on one-time elections for charitable gift annuities applies separately from the \$100,000 limit on qualified charitable distributions.
- Partial Annuitization (§204). To help partially-annuitized participants make use of the new rule for calculating RMDs, the letter requests that Treasury and IRS provide a valuation methodology for use when the annuity provider does not provide a valuation of the annuity.
- Allowance of Rollovers from 529 Plans to Roth IRAs (§126). The letter requests guidance on several aspects of this new rollover option, including the requirement that the 529 account must have existed for at least 15 years, application of the IRA compensation requirement, the limitation on roll over of recent contributions and earnings, and how to report the rollovers.
- Automatic Enrollment Required for New Plans (§101). The letter requests clarification regarding the impact of certain plan changes on eligibility for the grandfather exemption applicable to existing plans and guidance for non-grandfathered plans regarding which employees must be automatically enrolled in 2025.
- New Types of Penalty-Free Withdrawals (§§ 115, 331, 314, 326, 334). The letter notes that payors need guidance on how to report the new types of penalty-free withdrawals on Form 1099-R and plans need confirmation that the new types of withdrawals are not protected benefits subject to the anti-cutback rules.
- Additional Contributions to SIMPLE Plans (§§ 116 and 117). For the new enhanced contribution opportunities under SIMPLE plans, the letter requests acknowledgement that sponsoring employers are better positioned to ensure compliance with applicable limitations, due to the employer having access to the relevant information.
- Treatment of Student Loan Payments as Elective Deferrals for Purposes of Matching Contributions (§110). The letter requests guidance on the required frequency of allocating any matching contributions that are based on student loan payments, and recommends a flexible standard that permits allocation of such contributions no less frequently than annually.

Many of these provisions became generally effective, for certain individuals or plans, either upon the date of enactment of the Act or beginning on January 1, 2023. Others are effective in later years but involve significant questions needing guidance as soon as possible to enable timely implementation. The letter describes specific guidance (and in some cases relief) identified by ICI members as crucial to implementing these changes.

In addition to guidance on specified provisions, our letter recommends that Treasury and IRS confirm that, in the absence of specific guidance, plan and IRA service providers can rely on a reasonable, good faith interpretation of the SECURE 2.0 Act changes under the tax code.

We expect to follow up with additional letters to regulators on these and other provisions, as members further consider the issues needing guidance. We encourage members to continue to send us questions and recommendations on SECURE 2.0 implementations

issues.

Elena Barone Chism  
Deputy General Counsel - Retirement Policy

Shannon Salinas  
Associate General Counsel - Retirement Policy

#### **Notes**

[1] For an overview of the SECURE 2.0 Act, see ICI Memorandum No. 34795, dated January 12, 2023, available at <https://www.ici.org/memo34795>.

[2] On March 7, 2023, the IRS issued Notice 2023-23, providing relief with respect to incorrect RMD notices provided to IRA owners who turn 72 in 2023. Our letter thanked the IRS for this guidance, and described the additional relief and guidance that is still needed. For an overview of Notice 2023-23, see ICI Memorandum No. 35197, dated March 20, 2023, available at <https://www.ici.org/memo35197>.

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.