

**MEMO# 35365**

July 3, 2023

# **SECURE 2.0 Act Updates: Letter to Congress Advocating Delay of Roth Catch-Up Requirement; Letters from Congress to Agencies**

[35365]

July 03, 2023

TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: SECURE 2.0 Act Updates: Letter to Congress Advocating Delay of Roth Catch-Up Requirement; Letters from Congress to Agencies

ICI participated in a multi-organization letter, described below, to advocate for a delay of the new requirement of the SECURE 2.0 Act<sup>[1]</sup> that certain catch-up contributions be made as Roth contributions. In addition, we wanted to remind members that in May two letters were sent from the Congress to the agencies regarding implementation of the SECURE 2.0 Act.

## **ICI Joins Other Organizations to Advocate for Delay of Roth Catch-Up Requirement**

On the June 6, 2023 joint call of the Pension Committee and Pension Operations Advisory Committee, members agreed that ICI should seek a delay of the requirement that, effective for taxable years beginning after December 31, 2023, catch-up contributions by those making more than \$145,000 must be made as Roth contributions (§603 of SECURE 2.0 Act).<sup>[2]</sup> ICI joined a multi-stakeholder letter led by the American Benefits Council urging the Congress and Treasury to delay this effective date by two years. The letter, submitted on June 29, 2023 (attached at the end of this memo), has over 200 signatories, including trade associations, individual companies, public employee plans, and others. ICI will continue to advocate on this issue with Members of Congress and their staff. We understand that Congress is looking into the cost of a delay.

## **Letter from Congress to Treasury/IRS on SECURE 2.0 Technical Corrections**

On May 23, 2023, the Chairs and Ranking Members of the House Ways and Means and

Senate Finance Committees sent a letter (attached at the end of this memo) to the Treasury and IRS clarifying congressional intent on various SECURE 2.0 Act items. The letter states that the four Members of Congress intend to introduce technical corrections legislation to correct erroneous statutory language, which may include items not addressed in the letter.

The letter specifically mentions four provisions of the SECURE 2.0 Act that will be addressed<sup>[3]</sup>.

- Modification of credit for small employer pension plan startup costs (§102). Section 102 increases the credit for small employer pension plan startup costs. The provision could be read to subject the additional credit for employer contributions to the dollar limit that otherwise applies to the startup credit. However, according to the letter, Congress intended the new credit for employer contributions to be in addition to the startup credit otherwise available to the employer.
- Increase in age for required beginning date for mandatory distributions (§107). Section 107 contains a drafting error impacting individuals born in 1959, who will turn 73 in 2032. In this case, it is unclear whether the individual's Required Minimum Distribution (RMD) age is 73 or 75 (according to the letter, the RMD age for such individual is 73). In other words, Congress intended to increase the applicable age from 73 to 75 for individuals who turn 73 after December 31, 2032.
- SIMPLE and SEP Roth IRAs (§601). Section 601 includes a drafting error, under which any contributions (Roth or pre-tax) made to a SIMPLE or SEP IRA would reduce the contribution an individual could make to a separate Roth IRA for that year. The letter explains that Congress intended retain the existing rule that no contributions to a SIMPLE IRA or SEP plan (including Roth contributions) be taken into account for purposes of the otherwise applicable Roth IRA contribution limit.
- Elective deferrals generally limited to regular contribution limit (§603). Section 603 includes a drafting error, which could effectively preclude all catch-up contributions over the regular 402(g) limit beginning next year. The letter explains that Congress did not intend to disallow catch-up contributions, but rather to limit the availability of pre-tax catch-up contributions to participants whose wages from the employer sponsoring the plan do not exceed \$145,000 for the preceding year.

## **Letter from HELP Committee to DOL**

On May 30, 2023, Bernie Sanders (I-VT) and Bill Cassidy (R-LA), the Chairman and Ranking Member of the Senate HELP Committee, sent a letter to DOL (attached at the end of this memo), addressing rulemaking and guidance under SECURE 2.0. The letter asked that DOL "effectively and expeditiously implement the SECURE 2.0 Act," and that in doing so, it should prioritize the following six provisions:

- Worker Ownership, Readiness, and Knowledge Act (§346). The SECURE 2.0 Act establishes an Employee Ownership Initiative within DOL, which may make grants to promote employee ownership through existing and new programs in the states. Funds are authorized to be appropriated for the purpose of making grants for fiscal years 2025 to 2029.
- Defined benefit annual funding notices (§343). Effective for plan years beginning after December 31, 2023, the SECURE 2.0 Act makes several changes to defined benefit plan annual funding notices to require more detailed information on a plan's funding status.
- Emergency savings accounts linked to individual account plans (§127). Effective for plan years beginning after December 31, 2023, the SECURE 2.0 Act permits

employers to offer, as part of a DC plan, a new short term "emergency savings account" to non-highly compensated employees.[\[4\]](#)

- Report by the Secretary of Labor on the impact of inflation on retirement savings (§347). The SECURE 2.0 Act directs DOL, in consultation with Treasury, to study the impact of inflation on retirement savings and submit a report to Congress within 90 days after enactment.[\[5\]](#)
- Review of pension risk transfer interpretive bulletin (§321). The SECURE 2.0 Act directs DOL, no later than one year after enactment, to review its interpretive bulletin (IB) 95-1 ("Interpretive bulletin relating to the fiduciary standards under ERISA when selecting an annuity provider for a defined benefit pension plan"), considering its application to pension risk transfer transactions, to consult with the ERISA Advisory Council,[\[6\]](#) and to determine whether amendments to the IB are warranted. The Act also directs DOL to report to Congress on the findings of its review, including an assessment of any risk to participants.
- Consolidation of defined contribution plan notices (§341). Not later than two years after enactment, DOL and Treasury must adopt regulations permitting a DC plan to consolidate two or more of the following notices required under ERISA and the Internal Revenue Code: qualified default investment alternative (QDIA) notice, automatic contribution arrangement notice, 401(k) safe harbor plan notice, qualified automatic contribution arrangement notice, and permissive withdrawal notice.[\[7\]](#)

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#### 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>. On March 23, 2023, ICI submitted a letter to Treasury and IRS requesting guidance and relief relating to the SECURE 2.0 Act. See ICI Memorandum No. 35218, dated March 28, 2023, available at <https://www.ici.org/memo35218>.

[\[2\]](#) ICI's March 23, 2023 letter to Treasury and IRS requested guidance on several issues related to this provision on which clarification is needed. See ICI Memorandum No. 35218, dated March 28, 2023, available at <https://www.ici.org/memo35218>.

[\[3\]](#) ICI raised some of these issues in its March 23, 2023 letter to Treasury and IRS. See ICI Memorandum No. 35218, dated March 28, 2023, available at <https://www.ici.org/memo35218>.

[\[4\]](#) DOL's most recent regulatory agenda includes a regulatory project (Emergency Savings Accounts Linked to Individual Account Plans) that will address this provision. The agenda lists the item as being in the pre-rule stage and lists as expected actions that it will hold "stakeholder meetings" by June 2023. See ICI Memorandum No. 35358, dated June 26, 2023, available at <https://www.ici.org/memo35358>. For more details on this provision, see ICI Memorandum No. 34795, dated January 12, 2023, available at <https://www.ici.org/memo34795>.

[\[5\]](#) Note that this deadline has already passed (90 days after December 29, 2022 was

March 28, 2023).

[6] The ERISA Advisory Council is scheduled to discuss this issue with DOL staff on July 18, 2023. Notice of the meeting was published at 88 Fed. Reg. 37101 (June 6, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-06-06/pdf/2023-11939.pdf>.

[7] DOL's most recent regulatory agenda includes a regulatory project (Improving Participant Engagement and Effectiveness of ERISA Retirement Plan Disclosures) that will address this and other reporting and disclosure provisions of the SECURE 2.0 Act in the aggregate. The agenda lists the item as being in the pre-rule stage and lists as expected actions that it will hold "stakeholder meetings" by June 2023. See ICI Memorandum No. 35358, dated June 26, 2023, available at <https://www.ici.org/memo35358>.

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