

MEMO# 35596

January 24, 2024

IRS and Treasury Issue Proposed Regulations for Long-Term Part-Time Employee Participation in 401(k) Plans

[35596]

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: IRS and Treasury Issue Proposed Regulations for Long-Term Part-Time Employee Participation in 401(k) Plans

On November 27, 2023, IRS and Treasury published proposed rules for the treatment of long-term part-time employees under 401(k) plans, pursuant to the SECURE Act and the SECURE 2.0 Act.[\[1\]](#)

Background

SECURE Act § 112 requires that 401(k) plans (except for collectively bargained plans) permit participation by employees who complete at least three consecutive years of service with at least 500 hours of service each year. Such workers do not need to be included in testing for nondiscrimination and coverage requirements, or for application of certain top-heavy rules. Section 112 applies to plan years beginning after December 31, 2020, except that for determining whether the three consecutive year period has been met, 12-month periods beginning before January 1, 2021, are not taken into account. SECURE 2.0 Act § 125 expands on SECURE Act § 112, providing that effective for plan years beginning after December 31, 2024, the three-year requirement is reduced to two years. Section 125 also extends the long-term part-time coverage rules to 403(b) plans that are subject to ERISA.

Proposed rules

The proposed rules would amend 26 C.F.R. § 1.401(k)-5 (currently reserved) to provide for rules pursuant to the above SECURE Act and SECURE 2.0 Act provisions.[\[2\]](#) Under the proposed rules, a "long-term, part-time employee" would be an employee eligible to participate in a plan solely due to having completed two consecutive 12-month periods with at least 500 hours of service (and for plan years beginning in 2024 only, three consecutive 12-month periods of service). Once an employee satisfies a plan's other eligibility requirements (other than by virtue of this definition), they are no longer considered a long-

term part-time employee for purposes of these rules.

Long-term part-time employees would have to become eligible to participate in a plan no later than the earlier of (i) the first day of the first plan year beginning after they meet the above definition, or (ii) six months after they meet the above definition. Additionally, all 12-month periods during which an employee is credited with at least 500 hours of service (except for 12-month periods beginning before January 1, 2021) would be taken into account for purposes of determining whether an employee is eligible to participate as a long-term part-time employee. For example, even 12-month periods during which an employee is included in a classification of employees who are ineligible to participate in the plan would be taken into account in making the eligibility determination under the proposal.

As an exception to the requirement to cover long-term part-time employees, they may be excluded from participation in a plan under conditions of eligibility that are not based on age or service (or have the effect of an age or service requirement). We note that under the proposed rules once a long-term part-time employee is otherwise eligible to participate in a plan (e.g., by completing 1,000 hours of service in a 12-month period), they would nonetheless continue to accrue vesting service (for purposes of any matching and nonelective contributions) under the above 500-hour test—irrespective of another, higher applicable threshold under the plan.

Long-term part-time employees are not required to receive either nonelective or matching contributions, even where such contributions are part of an ADP safe harbor (and a plan would not fail such safe harbor as a result of not making these contributions). This nonelective or matching contributions carve-out for long-term part-time employees would not, however, extend to SIMPLE 401(k) plans. Long-term part-time employees also may be excluded for purposes of numerous nondiscrimination and coverage requirements, subject to certain limitations.

Comment period and reliance

Comments on the proposed rule are due January 26, 2024. IRS and Treasury also announced that a public hearing will be held March 15, 2024.

The proposed regulation is proposed to apply to plan years beginning on or after January 1, 2024; taxpayers may rely on the proposed rules prior to the publication of final rules.

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Notes

[1] For an overview of the SECURE Act, see ICI Memorandum No. 32118, dated Dec. 20, 2019, available at <https://www.ici.org/memo32118>. For an overview of the SECURE 2.0 Act, see ICI Memorandum No. 34795, dated Jan. 12, 2023, available at <https://www.ici.org/memo34795>.

[2] Long-Term, Part-Time Employee Rules for Cash or Deferred Arrangements Under Section 401(k), Notice of proposed rulemaking and notice of public hearing, published at 88 Fed. Reg. 82796 (Nov. 27, 2023) available at

<https://www.govinfo.gov/content/pkg/FR-2023-11-27/pdf/2023-25987.pdf>.

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