

MEMO# 35623

February 20, 2024

ICI Submits Comments on IRS "Grab Bag" Guidance on Various Provisions of SECURE 2.0 Act

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: ICI Submits Comments on IRS "Grab Bag" Guidance on Various Provisions of SECURE 2.0 Act

On February 20, 2024, ICI submitted the attached comment letter to the Internal Revenue Service (IRS) in response to Notice 2024-2, the long awaited "grab bag" guidance on various issues related to the SECURE 2.0 Act changes to the Internal Revenue Code (the "Code").[\[1\]](#) The Notice, in Q&A format, provides guidance on discrete issues related to twelve different provisions of the SECURE 2.0 Act to help the retirement plan community begin implementation. As a reminder, ICI submitted a letter to IRS and Treasury in March 2023 ("March Letter"), requesting guidance on several of these items.[\[2\]](#)

Our letter requested additional guidance and/or transition relief in response to five sections of the Notice.

Automatic Enrollment Required for New Plans (§101) (Section A of Notice)

The SECURE 2.0 Act will require newly established 401(k) and 403(b) plans to automatically enroll participants. Our letter requests clarification of the grandfather treatment (that applies to plans established prior to December 29, 2022, excluding them from the automatic enrollment requirement) and its application to multiple employer plans (MEPs) including pooled employer plans (PEPs). Specifically, we request that IRS confirm that the application of the grandfather rule to a MEP with respect to each participating employer plan depends on the date the employer first adopted the plan, regardless of when the MEP itself was first established.

Our letter also reiterates a question from our March Letter regarding the identification of which employees are subject to the automatic enrollment requirement beginning in the

2025 plan year (e.g., only to employees becoming eligible for the plan in 2025 and later, or to all eligible employees, including those who became eligible prior to the automatic enrollment effective date).

Contribution Limit to SIMPLE Plans (§ 117) (Section E of Notice)

The SECURE 2.0 Act increases the annual deferral limit for SIMPLE plans, and the catch-up contribution limit that applies at age 50 for SIMPLE plans. For employers with more than 25 employees and not more than 100 employees, the increased limits are available only with respect to those employers who make enhanced employer contributions on behalf of employees; for employers with no more than 25 employees, the Notice provides that the increased contribution limits apply automatically. Our letter requests transition relief for employers to whom the increased limits applied but who did not include this information in the notification provided to employees in 2023 for the 2024 plan year. The letter also requests flexibility for employers to adopt this change mid-year for 2024, and that IRS clarify that employers with 25 or fewer employees may voluntarily provide the higher employer contributions.

Terminal Illness Distributions (§326) (Section F of Notice)

The SECURE 2.0 Act provides a new exception from the ten percent early distribution penalty in the case of a distribution from a plan or IRA to a terminally ill individual. The Notice includes a list of items that must be included in a physician's certification of the individual's terminal illness and provided to the plan. Our letter reiterates the request from our March Letter, suggesting that IRS should permit employees to provide self-certification to the plan. At a minimum, IRS should narrow the list of required elements for the physician's certification of terminal illness required by the Notice.

Roth SIMPLEs/SEPs Permitted (§601) (Section K of Notice)

The SECURE 2.0 Act permits employers to offer employees the opportunity to have SIMPLE and SEP IRA contributions made as Roth contributions. Our letter requests transition relief to allow mid-year adoption of a Roth feature for the 2024 plan year, including relief with respect to the employee notice requirement. The letter also requests confirmation that plan sponsors can add a Roth feature that is available only for employee contributions and not for the employer matching or non-elective contributions. When plan sponsors do permit employer contributions to be made as Roth contributions, our letter requests clarification regarding the provision to employees of the Form 1099-R. Finally, the letter urges IRS to prioritize updating the model forms and language as soon as possible, including offering the model forms as single plans that offer a variety of options (e.g., both Roth and pre-tax) within the same form.

Roth Employer Contributions Permitted (§604) (Section L of Notice)

The SECURE 2.0 Act allows sponsors of 401(k), 403(b), and governmental 457(b) plans to offer employer matching contributions and nonelective contributions on a Roth basis, at the election of the employee. Our letter reiterates a question from our March Letter to IRS and Treasury requesting confirmation that time counted towards meeting the five-year holding period for Roth accounts with respect to earlier employee designated Roth contributions should be counted for purposes of Roth employer contributions, and vice versa.

Notes

[1] For an overview of Notice 2024-2, see ICI Memorandum No. 35590, dated January 22, 2024, available at <https://www.ici.org/memo35590>. 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] For an overview of the March Letter, see ICI Memorandum No. 35218, dated March 28, 2023, available at <https://www.ici.org/memo35218>.

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