

MEMO# 35885

October 21, 2024

IRS Provides Guidance on Long-Term, Part-Time Employees in 403(b) Plans

[35885]

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: IRS Provides Guidance on Long-Term, Part-Time Employees in 403(b) Plans

The IRS recently released Notice 2024-73, providing guidance on the treatment of long-term part-time (LTPT) employees under 403(b) plans.[\[1\]](#) The Notice also announces that the pending final regulations for 401(k) plan LTPT employees will apply no earlier than plan years beginning on or after Jan. 1, 2026.

Background

Section 125 of the SECURE 2.0 Act amends a provision from the Setting Every Community Up for Retirement Enhancement (SECURE) Act that requires 401(k) plans to permit participation by workers who complete at least three consecutive years of service with at least 500 hours of service each year.[\[2\]](#) The SECURE 2.0 Act reduces the three-year requirement to two years. As under the SECURE Act, such workers do not need to be included in testing for nondiscrimination and coverage requirements or application of the top-heavy rules. This provision also extends the LTPT coverage rules to 403(b) plans that are subject to ERISA. These changes are effective for plan years beginning after December 31, 2024.

In November 2023, IRS and Treasury published proposed rules for the treatment of LTPT employees under 401(k) plans.[\[3\]](#) IRS and Treasury proposed that the regulation would apply to plan years beginning on or after January 1, 2024, and confirmed that taxpayers may rely on the proposed rules prior to the publication of final rules.

Notice 2024-73

The new Notice provides guidance on how this part time worker coverage rule applies in light of some of the unique underlying rules for 403(b) plans and also provides an update on the pending final regulations for 401(k) plan LTPT employees.

Guidance for 403(b) plan LTPT employees

The Notice provides the following guidance, in Q&A format, applicable for plans years beginning after December 31, 2024:

- Non-ERISA 403(b) plans. The Notice confirms that the LTPT employee rule does not apply to 403(b) plans that are not subject to ERISA (e.g., governmental 403(b) plans). [Q&A-1]
- Exclusion of certain part-time employees. The Notice explains that 403(b) plans can retain an exclusion for part-time workers^[4] who do not meet the criteria for the special LTPT coverage rules (i.e., two consecutive years with 500 hours of service) without violating the 403(b) consistency requirement which otherwise prohibits selective application of a part-time worker exclusion.^[5] However, in this case a plan must continue to exclude all part-time employees who do not qualify as LTPT employees. [Q&A-3]
- Exclusion of student employees. The Notice also clarifies that 403(b) plans can continue to exclude student employees^[6] from participation even if the student otherwise meets the LTPT employee definition.^[7] [Q&A 4]
- Matching contributions. A 403(b) plan is permitted to exclude LTPT employees from receiving matching contributions (including under 403(b) plans using a section 401(m) ACP safe harbor design), and LTPT employees may be excluded for purposes of applying nondiscrimination testing of the matching contribution. However, once a LTPT employee becomes eligible to participate for a separate reason (apart from the LTPT rules), then the plan can no longer exclude that employee from receiving nonelective or matching contributions or from the application of nondiscrimination testing. [Q&A 5 and 6]

Proposed regulations on 403(b) LTPT employees expected to follow

The Notice indicates that Treasury and IRS will issue proposed regulations for 403(b) plan LTPT employees, which will be similar to the pending final regulations for 401(k) plans.

Update on final regulations on 401(k) LTPT employees

The Notice explains that the pending final regulations for 401(k) plan LTPT employees will apply no earlier than plan years beginning on or after Jan. 1, 2026.

Comments Requested

The IRS requests comments on the Notice, as well as on any rules with respect to section 401(k) LTPT employees that should apply differently for ERISA LTPT employees under section 403(b) plans. Comments are due by December 20, 2024.

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Notes

^[1] Notice 2024-73, released on October 3, 2024, is available at <https://www.irs.gov/pub/irs-drop/n-24-73.pdf>.

^[2] For a summary of the SECURE 2.0 Act, see ICI Memorandum No. 34795, dated January

12, 2023, available at <https://www.ici.org/memo34795>. For a summary of the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019, available at <https://www.ici.org/memo32118>.

[3] For an overview of the proposal, see ICI Memorandum No. 35596, dated January 24, 2024, available at <https://www.ici.org/memo35596>.

[4] Code section 403(b)(12)(A) allows 403(b) plans to exclude employees who normally work less than 20 hours per week (a plan may set a lower number of hours for this exclusion).

[5] The Notice states that "[e]xcluding [such] employees will not cause the plan to violate the section 403(b) consistency requirement under § 1.403(b)-5(b)(4)(i), which prevents a plan from selectively applying the part-time employee exclusion to some, but not all, part-time employees," and Treasury and IRS expect to update this regulatory provision accordingly. See page 7 of the Notice.

[6] Code section 403(b)(12)(A) allows 403(b) plans to exclude students performing services described in Code section 3121(b)(10).

[7] This interpretation would similarly allow a 403(b) plan to continue to exclude nonresident aliens and employees otherwise eligible to make elective deferrals under another section 403(b) plan, an eligible governmental section 457(b) plan, or a section 401(k) plan sponsored by the same employer.

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