U.S. Chamber of Commerce

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VIA Electronic Delivery

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RE: SECURE 2.0 Student Loan and Emergency Savings Guidance

Dear Helen, Rachel, and Ali:

This letter is a follow-up to the White House Listening Session on Leveraging the Workplace to Improve Financial Resilience: Emergency Savings & Student Loan Matches. The U.S. Chamber of Commerce (Chamber) appreciates your participation in the event and the work you have done on these topics. Attached is an updated list of areas where the Chamber believes guidance is needed relating to Sections 110, 115 and 127 of the SECURE 2.0 Act.

We look forward to working with you on this and other SECURE 2.0 provisions.

Sincerely,

Chantel Sheaks

Chantel Sheaks
Vice President, Retirement Policy
U.S. Chamber of Commerce

cc: Assistant Secretary Lisa Gomez
Ms. Elizabeth Kelly
Mr. Howell Jackson

Attachment

Student Loan Provisions

Section 110: Student Loans

- A plan sponsor should be allowed to exclude collectively bargained employees from a qualifying student loan program (QSLP).
- Section 110 requires that employees must certify their qualifying student loan payments annually to the plan sponsor, and the plan sponsor may rely on the employee certification for purposes of making employer matching contributions under a QSLP. The Department of the Treasury and the Internal Revenue Service (Treasury) should clarify that although plan sponsors may rely on the self-certification, they also may require participants to register eligible loans with the employer or plan sponsor so the payments made throughout the year may be tracked, provided the participant is given an opportunity to review and correct payment information collected.
- Treasury should clarify that a plan may have two different matching contribution schedules, i.e. one for elective deferrals and one for student loan matches where the employer requires verification of the amount of the student loan payment.
- If the plan sponsor does not track the student loan payments, and, instead relies on a certification:
    - May the certification be required more often than annually?
    - What is the method of certification or is that up to the employer or plan sponsor?
- Treasury should confirm that student loan repayments made on behalf of someone other than the participant are qualified student loan payments if the loan is in the participant's name.
- The statute provides that the Secretary of the Treasury may issue regulations permitting employers to establish reasonable procedures to claim matching contributions for student loan payments, including an annual deadline (not earlier than three months after the close of each plan year) by which a claim must be made.
    - Plan sponsors need flexibility in establishing student loan matching program procedures, and Treasury guidance should not mandate any particular procedures.
    - The use of the word "permitting" indicates that employers are not required to establish procedures to claim matching contributions after the end of the year, and Treasury should confirm this.
    - Treasury should keep in mind that current programs allow plan sponsors to capture data throughout the plan year, and, in many cases, the three-month claim period may not be necessary. As such, any guidance should state that the 3-month period is an optional run-out period, and a plan sponsor is not required to wait until the end of the three-month period to process the match for the prior year.
    - Treasury should clarify that the three-month period is for making a claim for a student loan payment made in the prior plan year, not for making a loan payment that counts toward the match. Specifically, only student loan payments made during the plan year qualify for a match for that year.

- Code Section 4979 imposes a 10% excess tax on, among other things, excess contributions over the maximum permitted under ADP and ACP testing, unless those excess amounts are distributed within 2 ½ months after the end of the plan year. To the extent plans are required to allow plan participants at least 3 months after the end of the plan year to provide certifications, those certifications could change applicable nondiscrimination testing results which, in turn, could give rise to corrective distributions that could not be made within the 2 ½ month time frame to avoid an employer excise tax. Treasury could harmonize this by specifying that the six-month period currently provided to certain EACAs under the statute will also be provided to plans that allow for student loan matching.
- The 3-month period to claim a student loan match means that this match could be after other matching contributions have been made and will cause administrative issues with current rules. Treasury should clarify how the late date will impact deductibility, 415 testing and other nondiscrimination testing, and that (as noted above) it is optional, and not required.
- Treasury should clarify that to be eligible for the match during the 3-month period, the individual must be actively employed on the date the match is made.
- Treasury should clarify that matching contributions for student loan payments that are later refunded or returned (before the plan's certification deadline) are not required to be forfeited. A match made based on a payment made in good faith should be permitted to remain in the plan.
- Treasury should not require that plan sponsors and their recordkeepers calculate and post the match on a rolling basis as employees submit claims because calculating and posting the match on a rolling basis would significantly increase administrative burdens for plan sponsors, especially those who may have thousands of participants enrolled in the program.
- Treasury should issue model amendments to implement matching contributions on qualified student loan payments.
- Treasury should clarify how to correct errors, for example if the match was made on an incorrect amount of a student loan payment.
- Any guidance should have a good faith compliance period of at least 12-24 months.

Emergency Savings Provisions

Section 115: Withdrawal for Certain Emergency Expenses

- The statute provides that the Secretary of the Treasury may provide through regulations for exceptions to the certification rule where the plan administrator has actual knowledge that is contrary to the employee's certification and for procedures for addressing cases of employee misrepresentation. Guidance on this would be welcome.
- Treasury should provide examples of what would be "unforeseen or immediate", but not limit it.
- Treasury should clarify whether the annual withdrawal is based on the plan year or from each distribution for each individual.

Section 127: Emergency Savings Accounts Linked to Individual Account Plans

- The statute provides that accounts may be "subject to, as permitted by the Secretary of Labor [and Treasury], reasonable restrictions." What are these restrictions? Plan sponsors and service providers will be reluctant to set up accounts until Treasury and DOL determine what, if any, restrictions will apply.
- The Secretaries must issue regulations within 12 months related to the anti-abuse provisions. Plan sponsors should be allowed to devise their own procedures and any guidance from Treasury should not be prescriptive, similar to what was issued in Notice 2024-22 (which the Chamber will provide separate comments).
- Both the ERISA and the Code provisions require the administrator to provide notices to individuals in the pension-linked emergency savings accounts. The Secretaries must prescribe regulations necessary to address reporting and disclosure requirements, but the regulations should seek to prevent unnecessary reporting and disclosure. With respect to the contribution amount, because this will undoubtably be out of date by the time the notice is provided, the administrator should be allowed to either refer to the account itself, list the amount of contributions as of a certain date, or refer the individual to the link to the online account. Also, if the notice is to inform individuals of a rate adjustment, the notice should only need to include the rate adjustment and how to opt out or change election amounts.
- DOL should issue a model notice. The Chamber has provided a model notice in response to the DOL's request for information dated August 11, 2023.
- Guidance on what is a reasonable time for making the contribution to the accounts and when distributions must be made after termination also would be welcome. This guidance should provide that contributions must be made under rules applicable to elective deferrals. With respect to distributions after termination, any guidance should provide that the distribution must be made within a reasonable time.
- An individual who becomes a highly compensated employee (HCE) may no longer make contributions. The statute uses the definition of HCE from Code Section 414(q). Treasury should verify that a pension-linked emergency savings account determines HCE status the same as under the Code, namely for compensation test int the preceding year and it may include the top 20 percent. Also, it should be clarified if the pension-linked emergency savings account must determine HCE status the same as the retirement plan.
- On January 17, DOL issued a set of FAQs relating to Section 127 emergency savings accounts, and the Chamber will provide separate comments on those.