U.S. Chamber of Commerce

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VIA Electronic Delivery

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Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2024-2)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044.

RE: Notice 2024-2

To Whom It May Concern:

On December 20, 2023, the Internal Revenue Service (IRS) issued Notice 2024-2 (Notice), which included guidance on various sections of the SECURE 2.0 Act (SECURE 2.0). In the Notice, the IRS specifically asked for comments on Sections 113 and 348 and solicited any other additional comments. The U.S. Chamber of Commerce (Chamber) appreciates the IRS' work on the Notice and the opportunity to provide input. Our responses are below by section.

Section 101: Automatic Enrollment

Section 101 of SECURE 2.0 requires that for plan years beginning after December 31, 2024, as a condition of qualification, a plan must be an eligible automatic contribution arrangements (EACA) that, among other requirements, provides that:

- The participant contribution for the first year is not less than 3 percent and not more than 10 percent (unless the participant otherwise elects); and
- Effective for the first day of each plan year starting after each completed year of participation, the contribution percentage is increased by 1 percentage point to at least 10, but no more than 15, (unless the participant otherwise elects).

The Section 101 requirements are effective for plan years after December 31, 2024. However, they do not apply to any plan that was established before December 29, 2022. This means that plans established after December 29, 2022 would not need to comply with this provision until the first day of the plan year after December 31, 2024.

We appreciate that the Notice addressed many of the Chamber's concerns we described in our April 7, 2023 letter to the IRS and the Department of the Treasury on implementation of SECURE 2.0, including the impact of mergers, acquisitions, and spinoffs. The following issues also should be addressed in future guidance:

- Clarification that a pre-enactment multiple employer plan (MEP) or pooled employer plan (PEP) merging into a post-enactment MEP or PEP would not lose its grandfather status.
- What is the definition of employee for purposes of determining whether this provision applies (e.g., are part-time employees, seasonal, or collectively bargained employees included)?
- When is it determined whether the employer "normally" employees more than 10 employees for a taxable year?
- Can a change in plan design or service provider cause a plan to lose its grandfathered status?
- The statute requires that the contribution increase is effective the first day of the plan year. Practically speaking, the increase would not be effectuated until the first payroll after the first day of the plan year. The IRS should clarify that the increase is effective as soon as administratively practical.
- The IRS should clarify what is the impact of the requirements of Section 101 and the current EACA notice requirements for plans established in the middle of the year.
- Are there any new notice requirements other than what is required for current EACAs and would the current notices need to be modified?

Section 113: De minimis financial incentives

Section 113 allows 401(k) and 403(b) plans to offer "de minimis financial incentives (not paid for with plan assets)" to employees who elect to make contributions to the plan. The provision was effective the first plan year after the date of enactment. We appreciate the clarification of many of the open issues. However, a few other issues remain open, such as:

- Allowing employers to use de minimis financial incentives to incent employees to increase their deferral amounts.
- Clarification that certain groups may be excluded, such as collectively bargained employees and/or highly compensated employees.
- Clarification that there are no other limits on the form of the incentive.

Section 117: Increase to SIMPLE IRA and SIMPLE 401(k) Limits

Section 117 automatically increased these limits for employers with 25 or fewer employees and for other employers, the employer must make the election for the increase to apply and must also make additional employer contributions. This section was effective for taxable years after December 31, 2023. In Q/A E-7 the IRS stated the deadline to make the election to increase for a calendar year must be made before the employer provides the annual notice to each employee as provided in Q/A G-1 of Notice 98-4, which requires the notice to be provided 60 days before January 1. For the 2024, this means the notice would have needed to be provided by November 2, 2023. With respect to employees with fewer than 25 employees, although the increase was automatic, the Notice provides that employers must notify employees of the increased limits before the enrollment period even if they "automatically" qualify.

Because the Notice did not come out until December 20, 2023, it would have made it impossible to comply with this and make the increase for 2024 for employers with more than 25 employee. With respect to employees with fewer than 25 employees, they also would not have had sufficient time to provide the notice of the automatic increase. The Notice did not provide any transition for the notice for 2024.

The IRS should provide transition relief for 2024 to allow employers who automatically qualify to notify employees during the year and allow employees to make a onetime change to their salary deferral elections. With respect to employers with more than 25 employees, they also should be allowed to provide a notice during 2024 that allows them to notify employees of the increase, allows changes to salary deferral elections, and allows the employer to make the additional contributions. The IRS should also provide transition relief for updating plan documentation to reflect the increase.

Section 326: Terminally Ill Distribution

Section 326 provides that the 10 percent penalty does not apply in the case of a distribution to an employee who is terminally ill if the employee provides sufficient evidence of the terminal illness to the plan administrator in the form and manner as the Secretary of the Treasury may determine. In Q/A 6 the IRS provided that the certification of terminal illness from the physician must include, among other things, a "narrative description of the evidence that was used to support the statement of illness of physical condition." In addition, the attestation from the physician must confirm that the physician who composed the narrative description based it on the physician's examination of the individual or review of the evidence the individual. Both of these requirements should be deleted, and an attestation of terminal illness from the physician should be sufficient. Alternatively, a plan administrator, recordkeeper or IRA custodian should be allowed to rely on a self-attestation. Given the severity of this type of distribution, it is highly unlikely that an employee or individual would provide a fraudulent or misleading certification or attestation.

Section 604: Matching and Nonelective Contributions as Roth.

Section 604 permits plans to allow employees to designate either matching or nonelective contributions as Roth contributions. In the Q/As, the IRS clarified that matching and non-elective contributions are not wages for federal income reporting or for FICA or FUTA. However, because these are income, in Q/A 9, the IRS stated such contributions will be treated as in-plan Roth rollovers and must be reported using Form 1099-R for the year in which the contributions are allocated to the account. Typically, 1099-Rs are issues by the trustee/custodian of a SIMPLE IRA. It would be helpful to have confirmation that the 1099-R can be issued by the trustee/custodian, and that it also would not need to be issued by the employer. Also, the IRS should confirm the trustee/custodian of a SEP or SIMPLE IRA would report Roth matching and Roth non-elective contributions to the employee on Form 5498, the same as what pre-tax match and non-elective contributions are reported on a 5498.

Conclusions

We appreciate the IRS' work on the Notice and other SECURE 2.0 provisions, and we look forward to working with you on the implementation.

Sincerely,

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