

A Look Ahead: A 2024 Wish List for SECURE 2.0 Guidance

POSTED ON DEC. 29, 2023

Tax professionals in the benefits industry have several requests for high-priority guidance concerning the SECURE 2.0 legislation that they hope to see in the coming year.

SECURE 2.0, enacted as part of the Consolidated Appropriations Act, 2023 (P.L. 117-328), features a variety of provisions set to take effect at the start of 2024 involving emergency savings accounts, student loan payments matching contributions, withdrawals for domestic abuse situations or financial hardship, and mandatory distribution changes.

However, it's not only these imminent provisions but some of the ones that have already gone into effect that tax professionals think should be addressed in IRS guidance.

Brigen Winters of Groom Law Group pointed to the hardship provisions — specifically hardship self-certification rules — and the provision allowing employers to provide matching contributions within a tax-qualified retirement plan based on their employees' qualified student loan payments.

Regarding the student loan matching contribution provision, Winters told *Tax Notes* that his clients have questions about the impact of the catch-up contribution limit, the determination over which types of loans are covered, the election process, and the model amendment language.

Sarah J. Touzalin of Seyfarth Shaw LLP said she thinks there will be a renewed interest in the student loan matching contribution provision in 2024, with employer questions focusing on eligibility.

"There is some desire to limit this to select groups of employees, provided the eligible group were non-highly compensated employees. It would be helpful if the IRS would address whether student loan matching can be limited to certain groups" of that type of employee — for example, new or recent hires, Touzalin said.

Touzalin added that other questions concern whether there will be any relief if an employer discovers later that the employee made a different repayment amount than expected, and what will be the audit requirements to show the matching amounts are correct.

Revisions With a Deadline

Tax professionals await the IRS's planned revisions to the Employee Plans Compliance Resolution System (EPCRS) that would reflect the new options for self-correction of eligible inadvertent failures and allow IRA custodians to address failures that occur with those accounts.

SECURE 2.0 requires that the EPCRS be revised within two years of the law's enactment on December 29, 2022, so "this priority item has a statutory deadline," according to Ronald G. Cluett of Caplin & Drysdale, who noted that the IRS issued interim guidance (Notice 2023-43, 2023-24 IRB 919) in May.

Touzalin said that her firm has been grappling with whether plans may ask participants to repay plan overpayments in one lump sum through the EPCRS.

SECURE 2.0 allows for the recouping of overpayments by reducing future payments or via the receipt of one or more installment payments by the plan. Touzalin questioned whether that payment would be considered only a single installment payment.

Little Time for Long-Term Part-Time

Cluett and Winters highlighted the need for finalizing the recently issued long-term part-time employee proposed regulations (REG-104194-23), which address the application of the relevant SECURE 2.0 provisions.

"These proposed regulations were issued over Thanksgiving weekend 2023, giving employers and service providers little time for review and implementation by January 1, 2024. The fact that plan amendments are not currently required affords time for plan document compliance, but operational compliance must proceed nonetheless," Cluett explained.

The short time frame between the proposed regs' issuance and their implementation date has been a concern from the start — the American Retirement Association has already asked

the IRS to issue immediate administrative relief from the impending effective date.

i DOCUMENT ATTRIBUTES ▼

CODE SECTIONS	SEC. 401 QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS SEC. 403 TAXATION OF EMPLOYEE ANNUITIES
JURISDICTIONS	UNITED STATES
SUBJECT AREAS / TAX TOPICS	BENEFITS AND PENSIONS TAX SYSTEM ADMINISTRATION
MAGAZINE CITATION	TAX NOTES FEDERAL, JAN. 1, 2024, P. 47 182 TAX NOTES FEDERAL 47 (JAN. 1, 2024)
AUTHORS	CAITLIN MULLANEY
INSTITUTIONAL AUTHORS	TAX ANALYSTS
TAX ANALYSTS DOCUMENT NUMBER	DOC 2023-36682
TAX ANALYSTS ELECTRONIC CITATION	2023 TNTF 248-4