

Wait for SECURE 2.0 Guidance Goes On as Effective Dates Loom

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The anticipated IRS guidance on a plethora of SECURE 2.0 provisions enacted at the end of 2022 has still not arrived as the calendar year turns to the second half of 2024.

While the “grab bag notice” ([Notice 2024-2](#), 2024-2 IRB 316) released in December 2023 was welcomed by employee benefits tax professionals for addressing some baseline issues raised by the retirement legislation, Elizabeth Thomas Dold of Groom Law Group pointed out that “the devil is in the details.”

“Without the details it is very hard for plan sponsors (and their recordkeepers) to be able to roll out new designs, some of which are mandatory, which makes waiting all the more difficult,” Dold told *Tax Notes* via email.

The grab bag notice [clarified](#) questions surrounding plan implementation of 12 high-priority sections of SECURE 2.0 — a compilation of bipartisan retirement provisions enacted as part of the [Consolidated Appropriations Act, 2023](#). Those provisions included the optional treatment of employer matching or nonelective contributions as Roth contributions, automatic enrollment expansion, and modification of the credit for small employer pension plan start-up costs.

There are several remaining SECURE 2.0 provisions that are front-runners for additional IRS guidance, according to Dold.

The mandatory eligible automatic contribution arrangement enrollment feature, which will take effect at the beginning of 2025, has seen “very little guidance,” Dold said. The parameters for the new Roth catch-up contribution requirement for high-income earners could also be addressed, she added.

That new rule requires that catch-up contributions be designated as after-tax Roth contributions for high-income earners — those whose prior-year Social Security wages exceeded \$145,000.

[Transition relief](#) is in place for the new rule under [Notice 2023-62](#), 2023-37 IRB 817, which provides that catch-up contributions that don't satisfy the new Roth mandate will be viewed as compliant through the end of 2025. However, Dold said that even with the transition relief, “the coordination with payroll requires sufficient time to implement.”

Michael L. Hadley of Davis & Harman LLP called the Roth catch-up contribution requirement surprisingly complex and said it is “by far the SECURE 2.0 provision in most critical need of guidance.”

Hadley said he supports the suggestion from Treasury officials that guidance on the Roth catch-up provision will come in the form of proposed regulations. But he added that the notice and comment process takes a long time, “and we need guidance very soon to avoid the need for another delay.”

Overpayment Payday

Sarah J. Touzalin of Seyfarth Shaw LLP said another aspect of SECURE 2.0 that needs clarifying is the new restrictions imposed on the pace and schedule for recouping plan overpayments in the absence of culpability.

“Guidance on this provision would be welcome sooner rather than later, as overpayments are common occurrences,” according to Touzalin.

Touzalin explained that the restrictions regarding lump sum overpayments are unclear — particularly whether plans can even ask participants to repay the amount in one lump sum, or if a lump sum is considered one installment payment.

If a lump sum can be considered one payment, then the 10 percent restriction on the amount that can be recouped each year would apply, making recoupment more difficult, Touzalin said. “Many of my clients are choosing not to attempt to recoup in this situation, provided the overpayment is relatively small,” she added.

Touzalin was also concerned about whether plan sponsors could offer participants or beneficiaries a choice to make repayments faster or in greater amounts than SECURE 2.0’s recoupment payment limitations advise.

“It would seem to make sense to allow participants or beneficiaries to choose to make repayments faster and/or in greater amounts, provided the plan administrator complies with the other restrictions under SECURE 2.0 on recoupment of overpayments,” Touzalin said.

More Deadlines

The approaching deadline for changes to the Employee Plans Compliance Resolution System to align with the provisions of SECURE 2.0 is drawing attention.

Ronald G. Cluett of Caplin & Drysdale said the interim guidance ([Notice 2023-43](#), 2023-24 IRB 919) on the [expanded use](#) of self-correction to correct failures was “welcome and helpful.” He added, however, that it didn’t satisfy SECURE 2.0’s requirement to revise the Employee Plans Compliance Resolution System under [Rev. Proc. 2021-30](#), 2021-31 IRB 172, which must be done within two years of the law’s enactment.

Another provision that’s lacked attention, according to Hadley, concerns the permitted transfer of unused [section 529](#) college savings accounts to the beneficiary’s Roth IRA. That provision, which went into effect at the beginning of 2024, contains “a number of requirements that are not clear and in need of guidance,” he added.

Employers considering the new student loan payment match effective at the start of 2024 could benefit from guidance, according to Dold, who anticipated the match to be a desirable plan feature to help employees save for retirement while paying off their student loans. It allows employers to treat student loan payments as elective deferrals for purposes of matching contributions.

When asked about the status of new SECURE 2.0 guidance, a representative from the IRS media office indicated that there are several related retirement provisions on the agency's [priority guidance plan](#).

"Whatever (and whenever) the guidance brings, a reasonable, good-faith standard and generous transition/correction relief is always a good start," Dold added.