FIDUCIARY NEWS ALERT

QUALIFIED PLAN ADVISORS

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IRS Issues SECURE 2.0 Guidance "Grab Bag"

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The Background

For months, the IRS has been working on a "grab bag" of guidance relating to the SECURE 2.0 Act of 2022 (SECURE 2.0). It had targeted a "fall" release date. By dropping Notice 2024-2 (the Notice) on December 20, 2023, the IRS (just barely) hit that target.

More to Come?

The 81-page Notice is notable for what it addresses (as seen below) and what it does not (e.g., student loan debt matching contributions, emergency savings accounts, and recoupment of overpayments). The absence of guidance in those key areas suggests that we'll see more guidance in 2024. For now, though, we'll focus on the guidance we *did* receive.

De Minimis Incentives to Participate

SECURE 2.0 permits employers to provide a "*de minimis* financial incentive" to employees who elect to make plan deferrals. The Notice confirms that the incentive:

- may be up to $250;
- may be provided only to an employee for whom no election is already in effect;
- provided, however, that it may be made in installments, such as providing a portion of the incentive up front for the initial deferral election and later providing the remainder in installments contingent on the employee continuing to defer; and
- is includible in gross income and wages, and subject to applicable withholding, reporting, and taxation requirements (unless some other exception applies).

SECURE 2.0 confirms that the incentive may not be paid by plan assets. The Notice seeks comments on the permissibility of the incentive coming from someone other than the employer.

Commentary: The limit is higher than expected and should be a welcome sign of the IRS's commitment to increasing plan participation. Many employers have been eager for this guidance and should celebrate the flexibility provided by a $250 limit.

Roth Employer Contributions

SECURE 2.0 permits employers to allow employees to elect for employer matching or nonelective contributions to be made on a Roth basis. The Notice confirms that:

- any such contribution is included in the participant's gross income for the year in which the amount is allocated to his or her account;
- the participant may designate an employer contribution as a Roth contribution only if he or she is fully vested in the contribution at the time the amount is allocated to the account; for further clarification, the Notice confirms that a participant may not make the Roth designation if he or she is only partially vested;
- Roth employer contributions are not included in "wages" or subject to withholding for federal income taxes, FICA, or FUTA;
- Roth employer contributions will be reported on a Form 1099-R; and
- an employer may permit Roth employer contributions even if the plan does not permit Roth employ*ee* deferrals.

Commentary: The Notice helps with some of the logistics. Now we wait to see how quickly recordkeepers and payroll providers move to make these contributions truly available.

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Required Automatic Enrollment

SECURE 2.0 requires that plans established on or after its December 29, 2022 enactment date include an eligible automatic enrollment arrangement (EACA). That requirement does not apply to plans existing before that date, which the IRS calls "pre-enactment" plans. The Notice provides practical guidance confirming:

- if a pre-enactment plan is the ongoing plan following a merger with a post-enactment plan in the context of a corporate transaction, the pre-enactment plan retains its pre-enactment plan status;
- if a post-enactment plan merges into a pre-enactment multiple employer plan, the broader multiple employer plan retains its pre-enactment status, but the post-enactment portion must include an EACA; and
- A plan spun off from a pre-enactment plan will retain its pre-enactment status after the spinoff.

Commentary: The devil may be in the details in these contexts, so we recommend a close examination of the specific facts. However, it's helpful to know practical guidance exists.

Automatic Enrollment Corrections

Over the last several years, the IRS has liberalized its guidance relating to potential plan errors relating to automatic enrollment. SECURE 2.0 codified some of that guidance. The Notice confirms:

- plan sponsors may continue to look to Revenue Procedure 2021-30 for details when correcting automatic enrollment failures;
- the Revenue Procedure's safe harbor provisions are available for affected participants who have terminated employment (subject to a modified notice requirements); and
- any missed matching contribution must be made within a "reasonable period", which will be met if made by the last day of the sixth month following the month correct deferrals begin (or would have begun for a terminated employee).

Commentary: This is welcome guidance confirming the ability to rely on the safe harbor correction method for terminated employees. Many employers already operated under that assumption, but the Notice provides more comfort.

Mid-Year SIMPLE IRA Termination

SECURE 2.0 provides an exception to the typical prohibition on mid-year terminations of SIMPLE IRA plans. The exception generally requires that an employer replace the SIMPLE IRA plan with a safe harbor 401(k) plan. The Notice confirms that the plans respective contribution limits will be determined on a weighted basis: "weighted by how many of the 365 days in the transition year each plan was in effect." As smaller employers explore mid-year SIMPLE IRA terminations in 2024 and beyond, this guidance will help with the contribution limit calculations.

Other Changes

This Alert does not explore areas of the Notice that will apply much less broadly than the areas discussed above, such as: credits for small employer plan startups, increased limits for SIMPLE IRAs, early distribution penalty exception for distributions to terminally ill individuals, cash balance crediting rates, or Roth contributions for SIMPLE IRAs or SEP-IRAs.

Questions? Please email meickman@qualifiedplanadvisors.com or call 402.509.2439.

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