

Details of the SECURE 2.0 Act: Provisions Related Specifically to 403(b) Plans



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SECURE 2.0 Act: 403(b)

On December 29, 2022, the SECURE 2.0 Act was included as part of a larger omnibus spending package, the Consolidated Appropriations Act, 2023. This article focuses on the three specific changes for section 403(b) tax-sheltered annuity plans (403(b) plans) that did not affect 401(k) plans. Plan amendments made pursuant to SECURE 2.0 are to be made by the end of 2025 (2027 in the case of governmental plans) as long as the plan operates in accordance with such amendments as of the effective date of a bill requirement or amendment. It also extended SECURE 1.0 and CARES amendment deadlines to December 31, 2025.

Section 106 of the SECURE 2.0 Act allows 403(b) Plans, other than church plans, to form or participate in a Multiple Employer Plan (MEP) or Pooled Employer Plan (PEP).

Under the old provision, a 403(b) plan could not participate in a MEP or PEP. These types of plans allow unrelated employers who may or may not share a common business connection to participate in the same plan.

Section 106 under the SECURE 2.0 Act allows 403(b) plans (other than church plans) to participate in multiple employer plans and pooled employer plans in plan years starting after December 31, 2022. This change allows 403(b) plans to aggregate plan management services, potentially resulting in simpler and more cost-effective plan administration. The statute created an exception to the unified plan rule for 403(b) plans that will prevent one participating 403(b) plan's loss of tax-qualified status from affecting the tax-qualification of all other plans in the MEP or PEP.

EFFECTIVE DATE: This section of the Act is effective for 403(b) Plans after December 31, 2022.

Section 602 of the SECURE 2.0 Act changes Hardship Rules for 403(b) Plans.

Under prior provisions, 403(b) plans were more restrictive than 401(k) plans in terms of the contributions and earnings available for hardship withdrawal. Hardship withdrawals from a 403(b) plan could only be funded from the employee's elective deferrals exclusive of earnings.

Section 602 under the SECURE 2.0 Act brings 403(b) hardship regulations in line with 401(k) hardship requirements. 403(b) plans can now allow hardship withdrawals of earnings attributable to the employee's elective deferrals as well as distributions from non-elective and matching contributions sources. 403(b) plan sponsors may want to consider amending their plans to permit hardship distributions from all available sources. SECURE 2.0 also simplified

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the administration of hardship withdrawals by allowing a 403(b) plan to accept a written declaration from the participant affirming that the requested withdrawal is (1) on account of a hardship of a type deemed to be an immediate and heavy financial need and (2) not in excess of the amount required to satisfy that need. This change, effective for plan years beginning after December 31, 2023, builds on recent IRS guidance that allows participants to self-certify that they lack alternative means reasonably available to meet a financial hardship. There are concerns and questions with allowing participants to self-certify the hardship as addressed in our previous article on hardship self-certification.

<https://www.consultRMS.com/Resources/38/Hardship-Withdrawals/188/Hardship-Document-Should-You-Allow-Self-Certification>

EFFECTIVE DATE: This section of the Act is effective for distributions required to be made after the December 31, 2023 plan year.

Section 128 of the SECURE 2.0 Act allows 403(b) Plans to invest in Common Investment Trusts (CIT).

Under the prior provisions, 403(b) plans were only allowed to invest in annuity products and custodial accounts. They were prohibited from investing in Common Investment Trusts.

SECURE 2.0 expanded 403(b) plan investment options to include collective investment trusts (CITs), effective for amounts invested after December 27, 2022. A CIT is a tax-exempt pooled investment vehicle that holds assets attributable to certain types of employer-sponsored retirement plans. 401(k) plans increasingly offer group trusts in their investment line-ups as cost-effective alternatives to mutual funds. The legislation however did not change the securities laws that prevent CITs from holding 403(b) plan assets. We are expecting this to be fixed with later legislation.

EFFECTIVE DATE: This section of the Act is effective for CIT after December 27, 2022 but not until available under securities law.

These sections of the SECURE Act are intended to bring 403(b) plans in line with 401(k) plans. We are waiting on additional guidance and clarification to implement all new provisions. Please contact RMS if you have any questions or concerns.

Public school 403(b) plans have a different set of effective dates. They are 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2023.



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