

SECURE 2.0 Guidance



RETIREMENT MANAGEMENT SERVICES, LLC
Plan Consulting • Administration • Design

RETIREMENT MANAGEMENT SERVICES, LLC
905 Lily Creek Road Louisville, KY 40243
1/26/2024

On December 20, 2023, the IRS gave us a nice holiday present with the release of guidance on several provisions of the SECURE 2.0 Act. We are commenting on the provisions that we believe are of highest interest to clients, advisors and CPAs. The following is a summary of the guidance for auto enrollment, SIMPLE and Roth provisions.

Auto Enrollment

SECURE 2.0 generally requires auto enrollment for 401(k) contributions no later than 2025 if the 401(k) component was established after December 29, 2022. A 401(k) component is considered established on the date when the plan initially adopts provisions for 401(k) deferrals. For example, if a profit sharing plan was established prior to 2022 but adds employee deferral provisions in 2024 then the plan will be subject to the auto enrollment mandate.

Plans with automatic enrollment features are granted special correction relief. Correct deferrals must begin by the earlier of the date of the first payment of compensation after (1) the 9½-month period following the plan year with the error or (2) if the employee reports the error, the second month after the month of notification. Eligible implementation errors can be corrected using the safe harbor correction method for automatic contribution feature failures in a section 401(k) or section 403(b) plan. The notice requirement clarifies that certain items in the required notice are not applicable for terminated employees. A corrective allocation of matching contributions, adjusted for earnings, must be made within a reasonable period after the corrected amount of elective deferrals begin. If made by the last day of the sixth month following the month when correct deferrals begin, it is considered within a reasonable period. For automatic contribution errors before December 31, 2023, the correction deadline is the end of the third plan year after the error occurred.

What happens if plans merge or are spun off another plan? If the surviving plan was established prior to December 29, 2022 and had a 401(k) component and the merger meets the requirements under section 410(b)(6)(c) transition period then it is considered “grandfathered”. If any of the requirements are not met then the merged plan will be subject to the auto enrollment mandate. This makes it very important to consider which plan will be the surviving plan.

Generally, for a spin off plan it will continue to follow the prior plan and will continue to be treated as before. The guidance confirms that the automatic enrollment mandate applies to starter 401(k) plans and safe harbor 403(b) plans.

SIMPLE and Roth

Increased SIMPLE Limits. SECURE 2.0 increased the deferral limits for SIMPLE IRAs and SIMPLE 401(k) plans in certain instances. The increased limits apply only if the employer had not established or maintained a qualified plan, section 403(a) annuity plan, or section 403(b) plan for substantially the same employees in the 3-year period before maintaining the SIMPLE plan. The increased limits apply automatically for eligible employers with up to 25 employees who received at least \$5,000 of compensation in the preceding calendar year and eligible employers with more than 25 such employees can choose to apply the increased limits by making an election but it also requires a higher employer contribution. All employees and self-employed individuals are counted (regardless of eligibility). A 2-year grace period is generally allowed for an employer that increases its employee count beyond 25. Employers making an election to apply increased limits must take formal written action and update plan terms accordingly. Employees must be notified of the increased limits. An employer's election to apply increased limits must be made before providing the annual notice to employees. The election remains effective until formally revoked.

Retirement Management Services, LLC
905 Lily Creek Road
Louisville, KY 40243



www.consultRMS.com Phone: 502-429-0767

Mid-Year Termination of SIMPLE. SECURE 2.0 provided employers an option to terminate a SIMPLE plan mid-year if a safe harbor 401(k) plan or starter 401(k) is adopted to replace the plan. An employer can terminate a SIMPLE IRA plan by formal written action specifying the termination date. No salary reduction contributions are allowed for compensation paid after the termination date. Employers must notify employees at least 30 days before termination, specifying the end of salary reduction contributions. The employer must still make matching contributions based on compensation through the termination date. Distributions, even those within the first two years of participation, may be rolled over to a 401(k) or 403(b) plan. Establishing a safe harbor plan is an exception to the rule prohibiting both a SIMPLE IRA plan and another plan in the same calendar year as long they are not active simultaneously. If a SIMPLE IRA plan is replaced by a safe harbor 401(k) plan mid-year, the total elective contributions must not exceed the weighted average of limits for each plan during the transition year. The notice required for the transition year must describe the weighted contribution limit—it cannot simply reference the annual limit.

Roth SIMPLE or SEP IRA. SECURE 2.0 permitted an employee who participates in a SIMPLE IRA plan or simplified employee pension (SEP) arrangement to designate a Roth IRA as the IRA to which contributions under the plan or arrangement are made. Employers are not obligated to offer employees a Roth contribution election. Employers cannot contribute to a Roth IRA without an employee's first making the Roth contribution election. Salary reduction contributions are included in the taxable year that would have included regular salary. Employer matching or nonelective contributions are included in the employee's taxes in the year of contribution. Salary reduction contributions will be reported on Form W-2 using Code F or S and are subject to income tax withholding, FICA, and FUTA. The employer matching or nonelective contributions will be reported on Form 1099-R and are excluded from wages for tax withholding purposes, FICA and FUTA. Employers can use existing forms until new guidance is issued.

Retirement Management Services, LLC
905 Lily Creek Road
Louisville, KY 40243



www.consultRMS.com Phone: 502-429-0767

Roth Employer Contributions. SECURE 2.0 added the ability of an employee to designate that employer matching contribution or nonelective contributions would be made to the plan on a Roth basis. The plan may adopt any aspect of a Roth contribution program without adopting the other. Thus, an employee generally may be permitted to designate an elective contribution as a Roth contribution without being permitted to designate a matching contribution or nonelective contribution as a Roth contribution. Rules that are similar to those for designated Roth elective contributions apply to designated Roth matching and nonelective contributions. Employees must make irrevocable designations, and separate accounting rules apply. Employees must have an effective opportunity to make or change designations at least once each plan year. Employees cannot designate a matching or nonelective contribution as Roth if not fully vested in that type of contribution when allocated. The plan will not be considered to fail section 401(a)(4) because it allows designated Roth contributions only to those participants who are fully vested. Designated Roth contributions are included in an individual's gross income for the year in which they are allocated to the account not necessarily the plan year in which they are made. Designated Roth matching and nonelective contributions are excluded from wages for federal income tax withholding, FICA, and FUTA purposes. For governmental 457(b) plans, however, the contributions may be subject to FICA (unless the employees are covered by a social security replacement plan). Designated Roth employer contributions will be reported in the same manner as if the contribution were directly rolled over to a designated Roth account using IRS Form 1099-R. Designated Roth contributions are not included in the 415 safe harbor definition of compensation.

Although this notice offers some guidance for plan sponsors and administrators, there is still a lot to be determined. We are waiting on additional guidance to answer many other SECURE 2.0 Act questions. We will keep you informed as more guidance is released. Please contact us if you have any questions or concerns.



Retirement Management Services, LLC
905 Lily Creek Road
Louisville, KY 40243

www.consultRMS.com Phone: 502-429-0767