

IRS Issues Practical Guidance for Implementing SECURE 2.0 Provisions

By **Suzanne E. Meeker** on January 9, 2024

The Internal Revenue Service gave retirement plan sponsors end-of-the-year gifts by providing guidance under twelve sections of the SECURE 2.0 Act of 2022 (“SECURE 2.0”). Although Notice 2024-2, released December 20, 2023 (the “Notice”), expressly does not provide “comprehensive guidance,” it does address urgent, practical questions for the implementation of new rules for 401(k), 403(b), and cash balance plans and SIMPLE/SEP IRAs. The Notice also extends the deadlines for adopting plan amendments to comply with SECURE 2.0 and earlier statutory changes for an additional year.

This post addresses guidance that applies to automatic enrollment under 401(k) and 403(b) plans and the plan amendment extension.

Automatic Enrollment in 401(k) and 403(b) Plans

Automatic Enrollment in New Plans (effective for plan years beginning after 2024). SECURE 2.0 requires 401(k) and 403(b) plans that are “established” on or after December 29, 2022—when SECURE 2.0 became law—to provide automatic enrollment for elective deferrals.¹ Plans established before that date are excepted from the new requirement (“grandfathered” plans). The Notice provides detailed guidance for determining which plans are grandfathered.

The Notice confirms that a 401(k) plan is grandfathered if the employer formally adopted the plan’s terms for elective deferrals before December 29, 2022, even if the plan’s effective date is later, for example, January 1, 2023. The rule is slightly different for 403(b) plans: a 403(b) plan is grandfathered if the plan was formally adopted before December 29, 2022, without regard to specific terms for salary reduction.

The Notice also details how grandfathering applies to plan mergers and spin-offs. In general, for plans sponsored by a single employer:

- If two grandfathered plans merge, the merged plan will be grandfathered.

¹ The plan must specify a uniform automatic enrollment deferral rate between 3% and 10% of employee pay. The plan must also provide a uniform annual automatic escalation of the deferral rate by one percent up to a specified maximum between 10% and 15% of employee pay. Employees may affirmatively opt out of automatic enrollment and escalation.

- If a non-grandfathered plan and a grandfathered plan merge, the ongoing plan will not be grandfathered unless both (1) the ongoing plan is the grandfathered plan and (2) the merger occurs during the transition period following an employer acquisition, merger, or similar transaction under Code section 410(b).
- If a plan is spun off from a grandfathered plan, the resulting new plan will be grandfathered.

Comparable rules apply to plans maintained by more than one employer, generally on an employer-by-employer basis.

Safe Harbor Correction of Automatic Enrollment Administrative Errors. New Code section 414(cc) sets forth terms for correcting certain errors made in the administration of automatic enrollment/escalation features (“implementation errors”) that, if followed, excuse the employer from making corrective contributions to the plan for missed elective deferrals resulting from an implementation error (the “SECURE 2.0 safe harbor”). The Notice clarifies that, in general, the SECURE 2.0 safe harbor correction method should follow the safe harbor correction method for automatic contribution failures in Appendix A of Rev. Proc. 2021-30 (the “EPCRS safe harbor”) (described in our blog post [here](#)), with these differences:

- Implementation errors may be corrected for terminated as well as active employees.
- The deadline for allocating matching contributions for the missed deferrals is the last day of the 6th month after correct deferrals begin, or would have begun for a terminated employee. The 3-year period for allocation under the EPCRS safe harbor remains available for automatic contribution errors that began on or before December 31, 2023.

The SECURE 2.0 safe harbor is effective for implementation errors where the deadline for beginning correct elective deferrals is after December 31, 2023.

Extended Plan Amendment Deadlines. The Notice provides an additional year for adopting required and elective amendments under SECURE 2.0 and also for certain amendments under the Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE Act”), the Bipartisan American Miners Act of 2019 (“Miners Act”), the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (“Relief Act”). The new deadlines for nongovernmental employer plans are:

December 31, 2026

Non-collectively bargained qualified plans
Non-collectively bargained 403(b) plans not maintained by public schools
SIMPLE/SEP IRAs



December 31, 2028

Collectively bargained qualified plans

Collectively bargained 403(b) plans of tax-exempt organizations

The new deadline for governmental plans of all types, including public school 403(b) plans, is December 31, 2029.

(Our blog posts [here](#) and [here](#) have more information about the content of the covered law changes and our view that plan sponsors will be best served by amending their plans sooner than the applicable legal deadline to incorporate SECURE Act, Miners Act, CARES Act, and Relief Act provisions that they have applied in operation.)

Please contact a member of our [Employee Benefits & Executive Compensation Group](#) if you have any questions about automatic enrollment or escalation features in your 401(k) or 403(b) plan or amending your plan for SECURE 2.0, the SECURE Act, the CARES Act, and other law changes.



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