

**Submitted Electronically**

January 26, 2024

Internal Revenue Service  
Attn: CC:PA:01:PR (REG-104194-23)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

**Re: Notice of Proposed Rulemaking: Long-Term, Part-Time Employee Rules for  
Cash or Deferred Arrangements Under Section 401(k)**

To Whom It May Concern:

On behalf of The ERISA Industry Committee (ERIC), thank you for the opportunity to comment on the proposed regulation entitled “Long-Term, Part-Time Employee Rules for Cash or Deferred Arrangements Under Section 401(k)” (Proposal or proposed rules) issued by the Internal Revenue Service (IRS) on November 27, 2023.<sup>1</sup> ERIC appreciates the guidance the IRS, the Department of the Treasury, and the Department of Labor have provided in connection with the SECURE 2.0 Act of 2022 (SECURE 2.0), including this proposal.

By way of background, ERIC is a national advocacy organization exclusively representing the largest employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. With member companies that are leaders in every economic sector, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their ability to sponsor benefit plans. ERIC member companies offer benefits to tens of millions of employees and their families, located in every state, city, and Congressional district, including to part-time employees.

Plan sponsors have been a major part of efforts to expand coverage in retirement plans, including defined contribution plans like 401(k)s. To make these plans available to more workers, the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 and SECURE 2.0 limited the ability of retirement plan sponsors to exclude certain “long-term part-time employees” (LTPTEs) from making their own salary deferral contributions. Under the SECURE Act, certain defined contribution plans must permit employees who perform work for at least 500 hours of service over three consecutive years to contribute. This was modified further by SECURE 2.0, which reduced the service period for LTPTEs to two consecutive years.

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<sup>1</sup> 88 Fed. Reg. 82796 (Nov. 27, 2023).

While many of the rules in the Proposed Regulation are straightforward and well-explained, there are certain complexities that may require a longer implementation period. For example, the treatment of employees who were former LTPTEs is complicated. Under the Proposal, if a participant:

- becomes eligible for the plan by virtue of being an LTPTE (i.e. worked more than 500 but fewer than 1000 hours in two consecutive years)
- then becomes a regular employee (works 1000 hours for a year)
- then drops back below 1000 hours,

then the participant will receive vesting credit as though the participant had been an LTPTE all along. Contrast this with a situation where a full-time employee that was never an LTPTE drops below 1000 hours in a year. That no-longer-full time employee may *not* receive vesting credit with respect to any employer contributions. At least some plan sponsors may have been surprised by this interpretation. We also understand further clarification may be needed about the eligibility of LTPTEs who meet the general eligibility requirements during a plan year. Depending on plan design, it seems possible under the Proposal's requirements that an LTPTE that meets the general eligibility requirements may not enter the plan as a regular employee until the next plan year under some circumstances; the IRS should clarify that this is a potential outcome.

In any case, at minimum, employers will need to analyze the implications of these proposed rules, decide if there should be plan design changes, and then implement them. The Proposal, implementing rules that were first created in the SECURE Act of 2019 (and amended by SECURE 2.0), was published in the Federal Register on November 27, 2023.<sup>2</sup> IRS has proposed applying these rules to plan years that begin on or after January 1, 2024, and to permit taxpayers to rely on these proposed rules until such time as a final rule is promulgated.<sup>3</sup>

While we appreciate the ability to rely on these proposed rules, we ask for a good faith compliance standard with respect to plan years that began January 1, 2024. We expect this would provide an appropriate path to full compliance with these proposed regulations, and will also provide additional time for any further guidance needed prior to IRS finalizing the rule.

We appreciate your consideration of this request. Please do not hesitate to contact us if we can be helpful.

Sincerely,

*Andy Banducci*

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<sup>2</sup> See also more limited guidance provided by the Treasury Department and IRS on September 2, 2020 (Notice 2020-68).

<sup>3</sup> *Id.* at 82807.