AICPA

April 27, 2023

Ms. Carol Weiser
Benefits Tax Counsel
Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

Ms. Rachel Leiser Levy
Associate Chief Counsel (EEE)
Office of Chief Counsel
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224

Re: Prioritization of Guidance Under SECURE 2.0 Act of 2022

Dear Ms. Weiser and Ms. Levy:

The American Institute of CPAs (AICPA) submits the comments below to the Department of the Treasury ("Treasury") and the Internal Revenue Service (IRS) related to the SECURE 2.0 Act of 2022 (SECURE 2.0), signed into law on December 29, 2022, as part of the Consolidated Appropriations Act of 2023.[1]

The AICPA is writing to prioritize certain provisions of SECURE 2.0 in need of immediate guidance in order for taxpayers to correctly implement the rules and comply with the law. We request that any guidance issued allows for a good faith interpretation of the law, by taxpayers, in the interim timeframe between when the law was passed, and guidance provided.

- Section 301, addressing the recovery of retirement plan overpayments, including clarification of how the effective date rules should be applied to certain actions (e.g., overpayment) occurring before the date of enactment. Effective upon enactment of SECURE 2.0.

- Section 305, addressing the expansion of the Employee Plans Compliance Resolution System, including clarification of the status of Revenue Procedure 2021-30 and the ability of plan sponsors to self-correct plan failures prior to the issuance of guidance on this provision. Effective for taxable years beginning after the date of enactment of SECURE 2.0.

- Section 302, which is effective for taxable years beginning after the date of enactment of SECURE 2.0, addressing the reduction in excise tax on certain accumulations in qualified retirement plans, including:
    - Clarifying the correction window (start and end), when the tax "…is imposed with respect to a shortfall of distributions…"
    - Clarifying that section 302(e)(1)(B) includes when the taxpayer "submits a return, for the year of correction made during the correction window, reflecting such tax (as modified by this subsection)."
    - Clarifying when the tax is imposed on a missed required minimum distribution (RMD).

[1] P.L. 117-328.

  - In cases where no income tax return is required to be filed for the year of a missed RMD (e.g., taxpayer's income is below the filing requirement), clarifying the due date for:
    - A waiver request under section 4974(d).[2]
    - Form 5329, *Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts*, required for reporting the missed RMD and penalty.
  - Provide a procedure to respond with IRS approvals on requests for waivers under section 4974(d) in all events, and if a waiver is denied, allow taxpayers a deferred opt-in to the section 4974(e) penalty.

- Section 313, addressing the individual retirement plan statute of limitations for excise tax on excess contributions and certain accumulations, including clarifying that trusts and estates are included in the language "… include the income tax return filed by the person on whom the tax under such section is imposed for the year..." Effective on the date of enactment of SECURE 2.0.

- Section 102, addressing the modification of the credit for small employer pension plan startup costs, including clarification of whether the credit applies to the wages of owners. Also, we suggest providing an example indicating the years for which the credit is available. Effective for taxable years beginning after December 31, 2022.

- Section 110, addressing the treatment of student loan payments as elective deferrals for purposes of matching contributions, including clarifying whether the term "qualified student loan payment" includes loans paid for the education of spouses and dependents. Also, we suggest permitting employers to allow self-certification subject to employer provided criteria, including evidence of the loan and repayments. Effective for plan years beginning after December 31, 2023.

- Section 127, addressing the treatment of emergency savings accounts linked to individual account plans, including clarifying whether contributions to emergency savings accounts are taken into account for purposes of the section 402(g) limitation on retirement plan elective deferrals excluded from taxable income. We also suggest permitting employers to impose restrictions. Effective for plan years after December 31, 2023.

- Section 603, addressing elective deferrals generally limited to regular contribution limits, including clarifying whether partners are considered eligible participants, and if so, how the section 3121(a) wages should be calculated for a partner. Effective for plan years beginning after December 31, 2023.

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[2] Unless otherwise indicated, hereinafter, all section references are to the Internal Revenue Code of 1986, as amended, or to the Treasury Regulations promulgated thereunder.

- Section 101, addressing the expansion of automatic enrollment in retirement plans, including guidance on how to define a new plan. Effective for plan years beginning after December 31, 2024.

- Section 109, addressing higher catch-up limits which apply at age 60, 61, 62, and 63, including clarifying whether the cost-of-living adjustment contains a rounding convention. Effective for taxable years beginning after December 31, 2024.

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The AICPA is the world's largest member association representing the accounting profession, with more than 421,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please feel free to contact Tom Pevarnik, Chair, AICPA Employee Benefits Taxation Technical Resource Panel, at (202) 879-5314, or tpevarnik@deloitte.com; Kristin Esposito, AICPA Director – Tax Policy & Advocacy, at (202) 434-9241, or kristin.esposito@aicpa-cima.com; or me, at (601) 326-7119, or JanLewis@HaddoxReid.com.

Sincerely,

Jan Lewis, CPA
Chair, AICPA Tax Executive Committee

cc: The Honorable Lily Batchelder, Assistant Secretary for Tax Policy, Department of the Treasury
The Honorable Daniel I. Werfel, Commissioner, Internal Revenue Service
Ms. Helen Morrison, Deputy, Benefits Tax Counsel, Office of the Benefits Tax Counsel, Department of the Treasury
Mr. William Paul, Principal Deputy Chief Counsel (Technical) and Deputy Chief Counsel, Internal Revenue Service
Ms. Lynne Camillo, Acting Deputy Associate Chief Counsel (EEE), Internal Revenue Service
Ms. Laura Warshawsky, Deputy Associate Chief Counsel, Employee Benefits, Internal Revenue Service
Mr. Ilya Enkishev, Attorney, IRS Office of Associate Chief Counsel (EEE), Internal Revenue Service