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Dear Carol and Rachel:

On December 29, 2022, President Biden signed the SECURE 2.0 Act, which contained over 90 distinct retirement plan provisions with varying effective dates. This letter addresses Section 603 which, starting after December 31, 2023, requires catch-up contributions for individuals with Internal Revenue Code (Code) Section 3121(a) wages (FICA wages) of more than $145,000 in the prior year to be made on a Roth basis. Given the administrative complexity and need for implementation guidance, the undersigned request transition relief until January 1, 2026.

Under Section 603, individuals with FICA wages of more than $145,000 in the preceding year from the plan sponsor may only make catch-up contributions on a Roth basis. If Roth catch-up contributions are made on behalf of such individuals, the plan must provide that any other individual may make Roth catch-up contributions. This is effective for taxable years starting on and after December 31, 2023.[1]

Although an outsider may see this as a straightforward requirement, there are numerous administrative hurdles that need to be overcome to implement it, many of which require guidance from the Department of the Treasury (Treasury) and the Internal Revenue Service . The imposition of the $145,000 limit introduced an administrative hurdle to this

[1] Unlike many employee benefit provisions, section 603's effective date did not include an exception for collectively bargained plans or governmental plans. While it appears that Section 603 does not apply to multiemployer plans, because an employer does not sponsor the plan nor does the participant receive any wages from the plan sponsor, in general new employee benefit provisions include an effective date exception for collectively bargained plans to be the later of the effective date or the termination of the most recent collective bargaining agreement if they are intended to apply to multiemployer plans. This delay allows time for the parties to negotiate over any needed changes, such as adding a Roth contribution option if it is ultimately determined that these provisions will apply to multiemployer plans. For governmental plans, extended effective dates are necessary to allow the legislature to amend the plans as needed. For example, many governmental plans do not provide for Roth contributions and would need a legislative action to do so. However, it is likely that there will not be enough time for many legislatures to act before December 31, 2023, and, instead, plans would eliminate catch-up contributions altogether. The same likely is true for collectively bargained plans. This means both types of plans would need additional transition relief. For example, governmental plans are typically provided at least two legislative sessions, not just calendar years, to amend statutes to come into operational compliance with changes to federal tax laws.

provision that plan sponsors had not anticipated. As you are aware, the $145,000 limit is not related to any other limit that currently exists for qualified retirement plans. As such, to be able to implement this provision, plan sponsors will need to coordinate with their payroll providers and retirement plan recordkeepers.

The first step of implementation, assuming the plan sponsor has or adds a Roth contribution source to their plan,[2] is for payroll providers to determine who had FICA wages of more than $145,000 in the preceding year from the plan sponsor. Currently, employers do not have any systems in place to make this determination, let alone by January 1.[3] Under the current system, the prior year's wages generally are not known or processed until mid to late January, and employers have until January 31 to file Forms W-2 with the IRS and provide them to employees. Also, current payroll systems do not distinguish between employees based on age, which is another factor that would need to be added in, including both those 50 and over in the preceding year and those who will be 50 in the following year. Wages based on age would need to be known by January 1 to be able to start processing who must make catch-up contributions on a Roth basis and who may be given a choice of whether to make catch-up contributions on a Roth or pre-tax basis. However, in reality, this date would need to be much sooner if plan sponsors would like to provide communications to participants and allow participants to make a choice before January 1, but this is impossible because wages are not actually known until after January 1.

In addition to modifying payroll and recordkeeping systems to receive FICA wages before January 1, recordkeepers also will need to update the way they process catch-up contributions. Currently, there are two ways to administer catch-up contributions: the single spillover contribution election and the separate contribution election. Under the spillover election, an individual elects one amount, and catch-up contributions begin after the participant reaches the annual regular contribution limit and end once the catch-up limit is reached. Under the separate contribution election, a participant separately elects regular contribution amounts and catch-up contribution amounts, and the contributions are made concurrently throughout the year. At the end of the year, contributions are reconciled to make sure that no participant receives catch-up contributions without reaching the IRS annual limit on regular contributions.

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[2] Not all plans include a Roth contribution option, which will add an additional compliance step for these plan sponsors. According to a Plan Sponsor Council survey, in 2021, 88 percent of plans offered a Roth contribution option. See 88% of employers offer a Roth 401(k) — almost twice as many as a decade ago. Here's who stands to benefit, December 16, 2022 available at https://www.cnbc.com/2022/12/16/88percent-of-employers-offer-a-roth-401k-how-to-take-advantage.html. For plans sponsors that do not offer Roth contributions, it is not merely a matter of "turning on" such contributions. Other factors also must be considered, such as if there is a match on pre-tax contributions will the employer also match Roth contributions. Such a plan sponsor also would need to decide whether to allow Roth contributions for only catch-up contributions or for all contributions. Alternatively, instead of offering a Roth option, some employers may instead decide to eliminate catch-up contributions, which would be administratively easier and less burdensome. This is especially true for smaller employers.

[3] The use of FICA wages is also problematic for governmental plans who use other definitions of compensation under the terms of the plan and/or in state and local governing statutes and regulations.

Even assuming the payroll provider can obtain and share the FICA wage information for each participant, both of these approaches will need to be modified or an entirely new approach created. For example, under the concurrent approach, both regular and catch-up contributions are taken out concurrently in the first payroll period. However, given that the recordkeeper would not know who had FICA wages above $145,000 in the prior year until subsequent payrolls toward the end of the month, this method would either need to be modified to prohibit catch-up contributions until the prior year's wages are known (likely in February) or build in a burdensome and manual corrective method. The end of the year reconciliation also would need to be modified.

Although the spillover method may not be as dependent on knowing the FICA wages up front, there currently is no mechanism in this method for changing the tax nature of the contribution once the pre-tax limit is reached. To do this, the payroll provider will need to tell the recordkeeper which amounts should be Roth. This will require systems to be changed, integrated, and tested between the two service providers, which will take substantial amounts of time. It would also create considerable disruption for plan sponsors and participants to switch from one method or another or to an entirely different method. Finally, any changes would need to be communicated to participants within the next six months, but most employee communications will also be dependent on how Treasury responds to the numerous other open questions that many organizations have presented to Treasury.

Plan sponsors, along with their payroll vendors and in-house payroll, and their service providers are working to implement this provision; however, because of the many outstanding issues that require Treasury guidance, it is proving difficult to implement this on a timely basis.[4] Even with guidance, this change is an enormous undertaking requiring significant coordination among multiple parties and the development, testing, integration, and implementation of entirely new systems, which will take substantial time to comply. Furthermore, there is the concern that implementation without guidance will result in plans having to redo much of their work, adding to the cost of implementation.

Accordingly, transition relief is needed with respect to Section 603 because this provision directs plan sponsors to integrate payroll and benefits administration systems in ways that have never before been required. A transition will allow more time for Treasury to discuss the issues with stakeholders and provide guidance, and it also will give plan sponsors and service providers an opportunity to test the system at the end of the year and beginning of 2024 and fix any issues that might arise from the testing and discuss whether additional Treasury guidance is needed.[5] A transition period also will give plan sponsors an opportunity to come up with effective participant communications that incorporate Treasury guidance.

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[4] Also, because many employer-sponsored health plans are on a calendar year basis, open enrollment is in the fall. This means that human resources staff will be deployed in the fall to ensure a smooth open enrollment and many of this same staff will need to ensure that open enrollment elections are implemented before the beginning of the new plan year starting January 1, 2024. This is only adding to the strain on HR staff.

[5] Given the need for transition relief for collectively bargained and governmental plans, similar relief should also be available for all plans.

In the past, Treasury has provided transition relief when implementation of a new law has proven to be to administratively difficult and burdensome and there has not been sufficient time for Treasury guidance before full implementation. Treasury has recognized that many new tax laws add administrative system changes that have not before been required, and these changes require significant program changes and time to test these changes, all of which is dependent on Treasury guidance.[6]

The undersigned appreciate the work Treasury has done in implementing SECURE and SECURE 2.0 and its continued stakeholder engagement. We look forward to working with you not only on Section 603, but the other SECURE and SECURE 2.0 provisions that need Treasury guidance.

Sincerely,

Alight Solutions
American Benefits Council
American Retirement Association
Aon
Cook County Government, Illinois
DMBA
El Paso Firemen & Policemen's Pension Fund
Empower
Fidelity Investments
Finseca

[6] Treasury has provided transition relief in a number of other areas where it was determined timely compliance was not feasible and administratively burdensome and where compliance needed additional Treasury and stakeholder input. See Notice 2000-5 (waiving corporate penalties for certain estimated taxes due December 15, 1999); Notices 2005-94, 2006-100, 2007-89, and 2008-115 (providing various forms of transition relief regarding the application of section 409A to nonqualified deferred compensation plans, including a multi-year suspension of reporting requirements, and a one-year suspension of withholding requirements); Notices 2005-29, 2006-2, and 2007-4 (providing transition relief for the section 470 loss disallowance rules applicable to certain pass-through entities); Notice 2007-54 (providing seven months transition relief for changes to the standards return preparers must follow to avoid penalties); Notice 2010-91 (providing transition relief for 3% withholding on contractors under section 3402(t)); Notice 2011-53 (providing preliminary transition relief for the Foreign Account Tax Compliance Act's withholding requirements before subsequent guidance provided additional relief); Notice 2011-69 (providing transition relief by postponing the application of reinstated excise taxes on air transportation and aviation fuels); Notice 2011-88 (providing transition relief for required backup withholding payments made in settlement of payment card and third-party network transactions, as enacted by the Housing Assistance Tax Act of 2008); Notice 2012-34 (providing transition relief for amendments to the cost basis reporting regime enacted by the Energy Improvement and Extension Act of 2008); Notice 2013-14 (providing transition relief for submitting a pre-screening notice to claim the Work Opportunity Tax Credit); Notice 2013-45 (providing transition relief for the Affordable Care Act's information and Shared Responsibility requirements); Notice 2023-10 (providing transition relief for the American Rescue Plan Act changes to the reporting rules applicable to certain payments in settlement of third party network transactions).

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National Association of Professional Employer Organizations
National Association of Government Defined Contribution Administrators
National Association of State Retirement Administrators
National Coordinating Committee for Multiemployer Plans
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