AMERICAN RETIREMENT ASSOCIATION

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Working for America's Retirement

December 20, 2024

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2024-73)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Notice 2024-73, Additional Guidance with Respect to Long-Term, Part-Time Employees, Including Guidance Regarding Application of Section 403(b)(12) to Long-Term, Part-Time Employees under Section 403(b) Plans

The American Retirement Association (ARA) is writing in response to the request for comments in Internal Revenue Service Notice 2024-73 (the "Notice"), which provides additional guidance with respect to long-term, part-time employee (LTPTE) rules, including guidance regarding the application of IRC § 403(b)(12) to LTPTEs under section 403(b) plans. ARA thanks the Internal Revenue Service (IRS or the "Service") for the opportunity to provide input on these matters.

The ARA is a national organization of more than 35,000 members who provide consulting and administrative services to American workers, savers, and sponsors of retirement plans and IRAs. ARA members are a diverse group of retirement plan professionals of all disciplines including financial advisers, consultants, administrators, actuaries, accountants, and attorneys ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system, the American Society of Pension Professionals and Actuaries ("ASPPA"), the National Association of Plan Advisors ("NAPA"), the National Tax-Deferred Savings Association ("NTSA"), the American Society of Enrolled Actuaries ("ASEA"), and the Plan Sponsor Council of America ("PSCA"). ARA's membership is diverse but united in a common dedication to America's employer-based retirement plan system.

Summary

ARA thanks the IRS for the guidance issued to date on the SECURE 2.0 Act of 2022 ("SECURE 2.0"). In particular, ARA generally agrees and applauds the guidance provided in the Notice, particularly the clarifications regarding interaction of IRC §403(b)(12) with the LTPTE requirements applicable to §403(b) plans. ***ARA recommends*** the Service issue guidance providing that a §403(b) plan that determining LTPTE vesting based on vesting computation periods (rather than eligibility computation periods) will be treated as satisfying the requirements of the statute.

Discussion

The final paragraph of Section II of the Notice describes the LTPTE vesting rule under ERISA §203(b)(4) and notes distinctions between the LTPTE vesting provision applicable to §403(b) plans and §401(k) plans. Specifically, the vesting computation periods for LTPTEs covered by a §403(b) plan would be subject to the eligibility computation period rules rather than the vesting computation period rules in IRC §411.

A 403(b) plan is subject to the LTPTE rules only if it is an ERISA-covered §403(b) plan. ERISA imposes vesting requirements on these §403(b) plans that mirror the IRC §411 vesting requirements. This means that ERISA plans subject to the LTPTE rules are required to determine vesting computation periods based upon IRC §411 rules for vesting, not eligibility. Requiring use of eligibility computation periods for vesting calculations for LTPTEs will create significant administrative problems for plan administrators and for their recordkeeping providers.

Therefore, ARA recommends the IRS provide guidance permitting a §403(b) plan to determine LTPTE vesting on the basis of vesting computation periods. ARA notes that this guidance will also effect Congress's intent with respect to the SECURE 2.0 provision. The Committee on Education and the Workforce circulated a discussion draft of technical corrections to SECURE 2.0 on December 6, 2023, which includes a technical correction to ensure that vesting computation periods may be used. Providing interim guidance to the contrary will create significant administrative expense for plan administrators.

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These comments are submitted on behalf of ARA and were prepared by ASPPA's IRS Subcommittee, Claire P. Rowland, Esq., QPA, QKA, Chair. If you have any questions regarding the matters discussed herein, please contact Kelsey N.H. Mayo, Director of Regulatory Policy, at kmayo@usaretirement.org or (704) 342-5307. Thank you for your time and consideration.

Sincerely,

/s/
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American Retirement Association

/s/
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