

May 21, 2021

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2020-80), Room 5203
Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Guidance on Coverage of Long-Term Part-Time Employee Rule

The American Retirement Association (“ARA”) is writing to request specific guidance under section 112 of the SECURE Act (Public Law 116-94). ARA thanks the Internal Revenue Service (“IRS” or “Service”) and the Department of the Treasury for the opportunity to provide input on these important matters.

The 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 members include organizations of all sizes and industries across the nation who sponsor and/or support retirement saving plans and are dedicated to expanding on the success of employer-sponsored plans. In addition, ARA has nearly 31,000 individual members who provide consulting and administrative services to sponsors of retirement plans. ARA’s members are diverse but united in their common dedication to the success of America’s private retirement system.

ARA recommends that the Service issue the following guidance as soon as possible:

- Clarification that employees who enter a plan before 2024 are not employees described in § 401(k)(15)(B)(i) of the Internal Revenue Code (“Code”) and therefore are not subject to accelerated vesting described in § 401(k)(15)(B)(iii) of the Code.

ARA thanks the Service for its work to date on implementing the SECURE Act and reiterates the need for timely guidance on SECURE Act provisions impacting plan administration.

Discussion

Section 112 of the SECURE Act amends § 401(k) of the Code to provide that a plan cannot require an employee to complete a period of service beyond 3 consecutive 12-month periods during each of which the employee completes at least 500 hours of service (the “Long-term Part-time Employee Rule”), and also not beyond the period permitted by § 410(a)(1) of the Code. The new paragraph 401(k)(15) then adds that an employee who is eligible to participate in a plan solely by reason of the Long-term Part-time Employee Rule and who receives employer contributions must be credited with a year of vesting service for each 12-month period in which the employee completes at least 500 hours of service. While the SECURE Act excludes years before 2020 for purposes of eligibility, it does not exclude those years for purposes of vesting.

As a result, plan sponsors and practitioners are concerned whether an employee who is currently receiving employer contributions could be entitled to vesting under the lower 500-hour standard instead of the 1000-hour standard under § 411 of the Code. For example—a plan permits all employees to participate following three months of service—in both the deferral portion of the plan as well as the match component. The plan has a 5-year graded vesting schedule on the match, and an employee earns a year of service for vesting by completing 1,000 hours during the 12-month vesting computation period. Employee A works 750 hours per year for 5 years, beginning in 2019. Employee A began participating in the plan in 2019, after completing 3 months of service. **ARA recommends** that the Service clarify now that this employee is not subject to the accelerated 500-hour vesting rule because the employee is not eligible to participate in the plan solely by reason of the Long-term Part-time Employee Rule.

ARA recommends the Service issue this guidance more rapidly than other SECURE Act guidance because it (a) affects current design and administration of plans and may be material in costs to plan sponsors, (b) will resolve significant issues relevant to a great many retirement plan sponsors and practitioners; and (c) will promote sound tax administration by helping plan sponsors and practitioners to maintain retirement plans in compliance with section 112 of the SECURE Act while still complying with the requirements of §§ 401(k)(15)(B)(iii) and 411(a)(4) of the Code.

We also invite the Service to meet to discuss this issue and the issuance of related guidance on the Long-term Part-time Employee Rule. If you have any questions regarding the matters discussed herein, please contact Kelsey Mayo at KMayo@USRetirement.org. Thank you for your time and consideration.

Sincerely,

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/s/
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