PUBLICATION

Final and Proposed Regulations for Retirement and Health Plans

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Prior to the end of the Biden administration, a number of proposed and final regulations were issued that impact retirement and welfare benefit plans. The final regulations are effective in 2025, and the proposed regulations, if finalized, would be effective in 2026. These proposed and final regulations provide guidance regarding certain sections of the Internal Revenue Code of 1986, as amended (the Code). Employers and plan sponsors should take care to ensure that steps are in place to comply with requirements effective in 2025 and prepare to comply with requirements effective in the following year.

Final Regulations

New Relief on ACA Employer Mandate Penalties

In December 2024, a new law was signed codifying and expanding relief already permitted by regulations to Applicable Large Employers (ALEs) from Code section 4980H employer mandate penalties, Code section 6055 minimum essential coverage (MEC) reporting, and Code section 6056 employer mandate reporting on Forms 1095-B and 1095-C. This new law is effective beginning with 2024 reporting, which is due in 2025.

To help alleviate 4980H penalties assessed on ALEs, the timeframe to respond to Letter 226J has been extended from 30 days to at least 90 days. This applies to assessments proposed in taxable years beginning in 2025 and later. Based on the timing of initial 226J letters issued by the IRS in prior years, plan sponsors should anticipate receiving these letters for proposed penalties two to three years after the year covered by the proposed assessment.

In addition, the IRS has now created a six-year statute of limitations on 4980H penalty assessments. The six-year period begins on the later of: (1) the due date of the Forms for the year in which the penalty would apply; or (2) the date the employer actually files the Forms for such year. This is effective with respect to Forms that are due in 2025. This is a significant change from the IRS's historical position that there is no statute of limitations on 4980H penalty assessments.

With respect to changes in ACA reporting requirements, the new law now formalizes regulatory guidance allowing the use of an individual's name and date of birth when the reporting entity is unable to collect a taxpayer identification number (TIN). Employers will still need to collect TINs from employees, so this provision mainly applies to dependents. It is unclear whether the codification impacts the requirement that reporting entities must make reasonable efforts to obtain the information to avoid penalties under the current TIN solicitation rules. More guidance would be welcomed.

Proposed Regulations

The IRS Anticipates a Delay in Applicability Date for Future SECURE 2.0 Required Minimum Distribution Regulations

On December 18, 2024, the IRS released an announcement that it anticipates delaying portions of proposed regulations on required minimum distributions (RMDs) until the 2026 distribution calendar year. Recall that in July of last year, the IRS issued proposed regulations as well as final RMD regulations reflecting SECURE Act

and SECURE 2.0 Act changes for purposes of determining RMDs for calendar years beginning on or after January 1, 2025, so that they would begin to apply at the same time as the 2024 final regulations (see our article).

The new announcement clarifies that certain portions of the proposed regulations relating to RMDs will apply no earlier than the 2026 distribution calendar year to allow plan sponsors additional time to comply with the future regulations once finalized. This means that until the regulations are finalized, plan sponsors must apply a reasonable, good-faith interpretation of the statutory provisions of the proposed July 2024 regulations.

According to the IRS guidance in IRS Announcement 2025-2, the effective date for some of the key changes of the July 2024 proposed regulations is extended until January 1, 2026. The following noteworthy provisions have been extended:

- The special spousal election under SECURE 2.0 for the spouse to elect to be treated as the participant. Specifically, a surviving spouse who is the employee's sole beneficiary may elect to be treated as the employee for certain purposes (such as extending the commencement of distributions until the participant would have reached their required beginning date). The proposed regulations, if finalized, provide that, if the employee dies before the required beginning date (RBD) and the sole beneficiary is the surviving spouse who is subject to the life expectancy rule, then the spouse would automatically be treated as making the election. If the employee dies on or after the RBD, then the corresponding election would not apply automatically unless the plan's written terms made the election automatic.

- Corrective distributions of missed RMD payments corrected by a distribution in a subsequent calendar year would have to be made in addition to the missed RMD payment.

Given that these and other proposed RMD regulations have not been finalized, this delayed effective date of future final regulations will be welcome news for plan sponsors.

The proposed regulations would also clarify the prior ambiguity in the drafting that resulted in RMDs of ages 73 and 75 for individuals born in 1959 by setting the RMD at 73. In addition, the IRS issued proposed RMD regulations stating that Roth distributions taken in a year when RMDs are required would not count towards the RMD distribution requirements but, as a result, are eligible rollover distributions.

IRS Proposes Regulations on SECURE 2.0 Act Catch-Up Provisions

The IRS has issued proposed regulations addressing SECURE 2.0 Act changes relating to retirement plan catch-up contributions. The proposed regulations first provide guidance on the application of the universal availability requirement to the increased catch-up contribution limits for participants between the ages of 60 and 63 (the greater of: (i) $10,000; or (ii) 150 percent of the regular catch-up amount for 2024, $11,250 for 2025). Secondly, the mandatory Roth tax treatment of catch-up contributions for 401(k) plans for participants whose salary exceeded $145,000 in the previous year is also addressed. The mandatory Roth rule was to apply beginning in 2024, but under transition relief, this mandate is postponed until 2026. More details are included below:

- *Increased Catch-Up Limit for Participants Reaching Certain Ages.* The proposed regulations do not provide significant substantive guidance with respect to the increased catch-up limit provision. There are three notable provisions in the proposal:

1. A plan would not fail to satisfy the universal availability requirement merely by permitting participants between the ages of 60-63 to make catch-up contributions up to the higher limit while other participants are limited to a lower amount.
2. The proposed regulations confirm that the increased catch-up limit is optional. However, the proposed regulations do not expressly provide an exception to the universal availability rule for plans within a controlled group where one or some controlled group members offer the increased catch-up limit and other plans do not.
3. In general, the regulatory provisions are proposed to take effect for contributions in taxable years beginning six months after the publication of a final rule, but plans may elect to apply them for taxable years beginning after December 31, 2024.

- *Mandatory Roth Treatment.* The proposed regulations reflect the statutory requirements and provide general rules for mandatory Roth treatment of catch-up contributions.

4. The proposal would amend Code Sections 401(k) and 403(b) to permit plans to allow a participant subject to the mandatory Roth catch-up requirement to be deemed to have irrevocably designated any catch-up contributions as designated Roth contributions. In addition, a plan could require the deemed election regardless of whether it requires separate catch-up contribution elections or utilizes a spillover design as long as the participant has an effective opportunity to cease making additional deferrals.
5. The proposal would also establish operational rules for determining what portion of a deferral is a catch-up required to be designated for Roth treatment and for correcting pre-tax contributions that should have been treated as Roth contributions. The proposed regulations would not require prorating the Roth catch-up wage threshold for a participant's first year of hire, so a participant who worked part of the previous calendar year would only be subject to the Roth catch-up requirement in the current year if their wages exceeded the full threshold for the previous year.
6. The proposal would provide that plans are not required to establish Roth programs, but the catch-up amount for participants subject to mandatory Roth treatment in a plan without a Roth program would be $0, precluding these individuals from making catch-up contributions. The proposed regulations include examples and guidance on nondiscrimination rules, methods, and timing for correcting failures to Roth catch-up provisions. The proposed regulations would take effect for contributions in taxable years beginning six months after the publication of a final rule, but plans may apply them to contributions in any taxable year beginning after December 31, 2023.

These proposed and final regulations provide helpful guidance to plan sponsors and employers. With respect to both the mandatory Roth catch-up provision and the increased catch-up provision, employers should begin to prepare to make changes to ensure plan documents, plan operations, and employee communications accurately reflect applicable regulatory requirements.

We will continue to monitor the agencies for further issuance of clarifying guidance, potential delays in implementation, model plan amendments, and regulations. If you have any questions or concerns regarding this alert, please reach out to Andrea Bailey Powers, Elverine "Rena" F. Felton, William E. Robinson, or any member of Baker Donelson's Tax Group.