INSIDE RETIREMENT

Quarterly Recap | Fourth Quarter 2022

LEGISLATIVE UPDATE

SECURE 2.0 PASSES IN 2022

President Biden has signed the SECURE 2.0 Act of 2022 into law along with the Consolidated Appropriations Act of 2023. The appropriations bill sets the spending allocations for the federal government for the fiscal year ending September 30, 2023, but the SECURE 2.0 Act is intended to help Americans save more for retirement for many years to come. With more than 90 provisions, SECURE 2.0 builds on the SECURE Act of 2019 to change the retirement savings rules and tax incentives to encourage more employers to provide plans for their workers, simplify plan administration, and help workers save more for retirement.

Many of these changes will require additional guidance and detail from the DOL or IRS, as well as administrative and programming changes for plan sponsors and recordkeepers. To assist with implementation, many of the provisions will not become effective until 2024 or later years.

One item that is effective for contributions made after the date of enactment is the option for employers to allow plan participants to treat employer contributions as Roth contributions. This would require the participant to include the employer contribution in taxable income for the year, and the contribution would have to be fully vested when made.

There are approximately 90 provisions in SECURE 2.0, which become effective over the course of the new few years. Here are some of the most popular provisions:

- Enhanced start-up tax credits for businesses with fewer than 100 employees
- Saver's tax credit will be refundable as a plan or IRA contribution for eligible taxpayers
- New deferral-only Starter 401(k) plan, subject to the IRA contribution limit
- RMD starting age will increase from 72 to 73 beginning in 2023 and then age 75 in 2033

- Designated Roth accounts will no longer be subject to RMDs
- Catch-up contribution limit will increase for those ages 60-63 to the greater of $10,000 or 150% of the limit in effect for the year
- Catch-up contributions for employees who earn more than $145,000 must be made as after-tax Roth contributions
- Employers may treat student loan payments as deferrals for purposes of matching contributions
- Participants may receive small financial incentives (e.g., gift cards) for contributing to a 401(k) or 403(b) plan
- Employers may allow employees to take one penalty-free withdrawal of up to $1,000 per year for emergencies if repaid or once every 3 years
- Employers may add emergency savings accounts to their plans, which may hold up to $2,500 after-tax contributions per participant
- The cash-out limit for nonresponsive participants will increase to $7,000
- The service requirement for part-time employees to be eligible to participate in the plan will decrease from 3 years to 2 years

Much more information to come as service providers digest the legislative text and regulatory agencies provide additional guidance.

DOL UPDATES

PROPOSED UPDATES TO VOLUNTARY FIDUCIARY CORRECTION PROGRAM (VFCP)

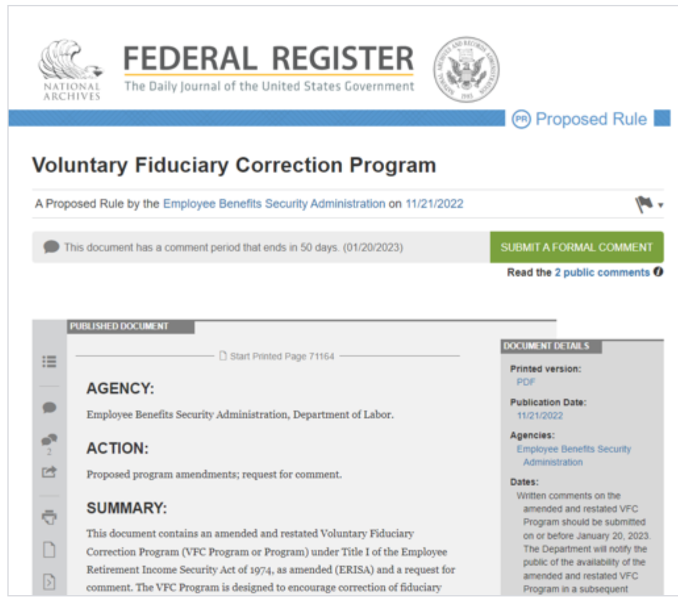
As part of its enforcement initiatives, the Department of Labor (DOL) provides a Voluntary Fiduciary Correction Program (VFCP) to encourage plan sponsors to correct common violations under ERISA and restore losses to the plan participants before becoming the subject of an enforcement action. Common ERISA fiduciary breaches that can be corrected using the VFCP include:

- Delinquent plan contributions
- Improper handling of participant loans
- Expenses improperly paid by a plan
- Prohibited purchases and sales of plan assets

The DOL has proposed updates to the VFCP and an accompanying prohibited transaction exemption (PTE) that would make it easier and more cost effective for plan fiduciaries to correct certain violations under the program. One major change from the existing program would allow plan sponsors to self-correct late deposits of employee salary deferrals and loan repayments (the most common fiduciary error) without having to contact the DOL for approval first.

To use the new self-correction procedures as proposed:

- The delinquent contributions must be deposited into the plan within 180 days of withholding from a participant's wages or receiving the amount from the participant
- The VFCP online calculator must be used to calculate lost earnings based on the actual date of withholding or receipt, and the lost investment earnings cannot exceed $1,000
- The plan fiduciary must electronically file a self-correction notice with the DOL and complete and retain a Self-Correction Retention Record checklist.


NATIONAL ARCHIVES

FEDERAL REGISTER

The Daily Journal of the United States Government

Proposed Rule

Voluntary Fiduciary Correction Program

A Proposed Rule by the Employee Benefits Security Administration on 11/21/2022

This document has a comment period that ends in 50 days. (01/20/2023)

SUBMIT A FORMAL COMMENT

Read the 2 public comments

PUBLISHED DOCUMENT

Start Printed Page 71164

AGENCY:

Employee Benefits Security Administration, Department of Labor.

ACTION:

Proposed program amendments; request for comment.

SUMMARY:

This document contains an amended and restated Voluntary Fiduciary Correction Program (VFC Program or Program) under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and a request for comment. The VFC Program is designed to encourage correction of fiduciary

DOCUMENT DETAILS

Printed version:
PDF

Publication Date:
11/21/2022

Agencies:
Employee Benefits Security Administration

Dates:
Written comments on the amended and restated VFC Program should be submitted on or before January 20, 2023. The Department will notify the public of the availability of the amended and restated VFC Program in a subsequent

The DOL is requesting comments on the proposed changes before it finalizes the updates and makes the new self-correction procedure available to plan sponsors.

FINAL GUIDANCE FOR PLAN FIDUCIARIES ON ESG INVESTING

On December 1, 2022, the DOL published final regulations, Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights, to provide guidance to plan fiduciaries on whether or how they may consider environmental, social, and governance (ESG) factors when analyzing retirement plan investment line ups.

The DOL has been providing guidance to plan fiduciaries related to economically targeted investing (ETI) and ESG factors since 1994. Over the years, the nuances of each piece of DOL guidance have alternately encouraged or discouraged the consideration of ESG investments by ERISA fiduciaries. For example, in 2020, the DOL published final regulations that stated fiduciaries could only evaluate plan investments based on pecuniary factors, and that they could only consider ESG factors if two investment options could not be distinguished based on financial factors alone. These regulations required fiduciaries to document why an ESG investment was chosen, and restricted fiduciaries from selecting an ESG investment as the plan's qualified default investment alternative (QDIA). Then, in 2021, the DOL announced that it was reexamining the 2020 regulations, and that it would not enforce them.

The newest "final" regulations released this fall make clear that fiduciaries are permitted to consider the economic effects of climate change and other ESG factors on a particular investment or investment course of action when they analyze investments for the plan and when they exercise shareholder rights, such as proxy voting. As always, fiduciaries must still meet the ERISA duties of prudence and loyalty, under which they must focus on relevant risk/return factors and cannot sacrifice returns, increase costs, or take on additional investment risk to promote collateral social policy goals. These basic fiduciary standards have not changed under the years of conflicting guidance. But the new regulations do allow fiduciaries to consider ESG or other collateral factors if they reasonably determine them to be relevant to their risk/return analysis of an investment. The final regulations also remove the documentation requirement for ESG investments chosen for the plan and permit the use of ESG investments as a QDIA. Fiduciaries may also take into account participant preferences for ESG investing when building an investment menu.

While these newest final regulations are more encouraging for plan fiduciaries who want to take ESG factors into consideration when analyzing plan investments, the regulations do not require fiduciaries to consider ESG factors if they don't deem them relevant to their risk/return analysis.

IRS UPDATES

RELIEF FOR MISSED BENEFICIARY PAYMENTS

The IRS announced in Notice 2022-53 relief for defined contribution plans and beneficiaries if certain distributions were not made from the plan in 2021 or 2022. The relief is provided in response to comments the IRS received on its proposed regulations implementing the new RMD and beneficiary distribution rules under the SECURE Act of 2019. The commenters indicated their confusion regarding the interpretation in the proposed regulations that requires beneficiaries who are subject to the 10-year rule to take annual life expectancy payments while depleting the account within 10 years if they inherited the account from a participant who died on or after their required beginning date for taking required minimum distributions (RMDs).

Because of this confusion in how to interpret the new 10-year rule, the IRS announced that it will not assess the 50% excise tax on beneficiaries who were required to take a payment for 2021 or 2022 under this rule in the proposed regulations. Defined contribution plans that fail to make a beneficiary distribution described in this relief also will not be treated as having a qualification failure.

The relief applies to beneficiaries who are required to follow the 10-year rule and who inherited a plan account from

- A participant who died on or after their required beginning date in 2020 or 2021, or
- Another beneficiary who was taking life expectancy payments and died in 2020 or 2021.

More clarification on the new rules is anticipate with the release of final regulations, which the IRS has indicated will apply no earlier than the 2023 calendar year.

2023 COST-OF-LIVING ADJUSTMENTS FOR RETIREMENT PLANS

LIMIT	2023	2022	2021	2020
Elective Deferral Limit	$22,500	$20,500	$19,500	$19,500
Catch-Up Limit	$7,500	$6,500	$6,500	$6,500
Overall Contribution Limit	$66,000	$61,000	$58,000	$57,000
Annual Compensation Limit for Contribution Purposes	$330,000	$305,000	$290,000	$285,000
Highly Compensated Employee (HCE) Compensation Threshold	$150,000	$135,000	$130,000	$130,000
Key Employee Compensation Threshold	$215,000	$200,000	$185,000	$185,000
Social Security Taxable Wage Base	$160,200	$147,000	$142,800	$137,700

This material was prepared by LPL Financial, LLC.

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