

TaxNewsFlash

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Legislative update: Finance, Ways and Means chairs and ranking members write letter to Treasury and IRS regarding Secure Act 2.0 technical corrections

The chairmen and ranking members of the tax-writing committees of the U.S. Congress yesterday wrote a [letter](#) [PDF 194 KB] (May 23, 2023) to Treasury Secretary Janet Yellen and IRS Commissioner Daniel Werfel regarding various sections of the SECURE Act 2.0 (signed into law on December 29, 2022, as part of the “Consolidated Appropriations Act of 2023” (H.R. 2617)). The letter was sent to the Treasury and IRS to “ensure that Congressional intent is carried out with respect to several provisions (listed below) of recently enacted retirement legislation.” The letter indicated that the four tax-writers intend to introduce bipartisan legislation to correct legislative language with respect to the provisions below and potential additional items from the SECURE Act 2.0. It was not indicated when such legislation would be introduced.

- Section 102, which increases the credit for small employer pension plan startup costs (“startup credit”), in part by allowing eligible employers a credit for a portion of employer contributions made to the plan, could be read to subject the additional credit for employer contributions to the dollar limit that otherwise applies to the startup credit. However, Congress intended the new credit for employer contributions to be in addition to the startup credit otherwise available to the employer.
- Section 107, which increases the age at which required minimum distributions from a retirement plan are required to begin, could be read to increase the applicable age from age 73 to age 75 for individuals who turn 74 (rather than 73) after December 31, 2032, which is inconsistent with Congressional intent.

- Section 601, which permits SIMPLE IRA plans and SEP plans to include a Roth IRA, could be read to require contributions to a SIMPLE IRA or SEP plan to be included in determining whether or not an individual has exceeded the contribution limit that applies to contributions to a Roth IRA. However, Congress intended that no contributions to a SIMPLE IRA or SEP plan (including Roth contributions) be taken into account for purposes of the otherwise applicable Roth IRA contribution limit.
- Section 603, which requires catch-up contributions under a retirement plan to be made on a Roth basis, for tax years beginning after 2023, if the participant's wages from the employer sponsoring the plan exceeded \$145,000 for the preceding calendar year, could be read to disallow catch-up contributions (whether pre-tax or Roth) beginning in 2024. However, Congress did not intend to disallow catch-up contributions nor to modify how the catch-up contribution rules apply to employees who participate in plans of unrelated employers. Rather, Congress's intent was to require catch-up contributions for participants whose wages from the employer sponsoring the plan exceeded \$145,000 for the preceding year to be made on a Roth basis and to permit other participants to make catch-up contributions on either a pre-tax or a Roth basis.

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