May 23, 2023

The Honorable Janet Yellen
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Daniel Werfel
Commissioner of Internal Revenue
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Secretary Yellen and Commissioner Werfel:

We are writing as the Chairs and Ranking Members of the Committees of jurisdiction to ensure that Congressional intent is carried out with respect to several provisions of recently enacted retirement legislation. The provisions, sections 102, 107, 601, and 603 of the "SECURE 2.0 Act of 2022" ("SECURE 2.0") (Division T of the Consolidated Appropriations Act, 2023), were enacted on December 29, 2022 (Pub. L. No. 117-328).

Section 102 of SECURE 2.0 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. The provision 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 of SECURE 2.0 increases the age at which required minimum distributions from a retirement plan are required to begin. Specifically, it changes the age on which the required beginning date for required minimum distributions is based (the "applicable age").

Congress intended to increase the applicable age from age 72 to age 73, for individuals who turn 72 after December 31, 2022 and who turn 73 before January 1, 2033, and to increase the applicable age from age 73 to age 75 for individuals who turn 73 after December 31, 2032. However, with respect to the increase from age 73 to age 75, the provision could be read to apply such increase to individuals who turn 74 (rather than 73) after December 31, 2032, which is inconsistent with Congressional intent.

Section 601 of SECURE 2.0 permits SIMPLE IRA plans and SEP plans to include a Roth IRA. Section 601 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 to retain the result under the law as it existed before SECURE 2.0 was enacted regarding SIMPLE IRA and SEP contributions (taking into account that section 601 permits SIMPLE IRA and SEP plans to include a Roth IRA). Thus, 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 of SECURE 2.0 requires catch-up contributions under a retirement plan to be made on a Roth basis, for taxable years beginning after 2023, if the participant's wages from the employer sponsoring the plan exceeded $145,000 for the preceding calendar year. A conforming change to section 603 might be read by some to disallow catch-up contributions (whether pre-tax or Roth) beginning in 2024. 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. This Congressional intent was noted in the Committee Report to accompany S. 4808, the Enhancing American Retirement Now Act (S. Rept. 117-142).

We intend to introduce technical corrections legislation to correct erroneous statutory language, which may include items not addressed in this letter, so that the provisions carry out Congressional intent. Please contact Payson Peabody (Chairman Smith), Kara Getz (Ranking Member Neal), Drew Crouch (Chairman Wyden), and Jamie Cummins (Ranking Member Crapo) with any questions you or your staff may have.

Sincerely,

Jason Smith
Chairman
House Committee on Ways and Means

Richard E. Neal
Ranking Member
House Committee on Ways and Means

Ron Wyden
United States Senator
Chairman
Committee on Finance

Mike Crapo
United States Senator
Ranking Member
Committee on Finance