

October 7, 2024

IRS Issues Guidance Regarding Long-Term Part-Time Employees and 403(b) Plans subject to ERISA

On October 3, 2024, the Internal Revenue Service (“IRS”) issued Notice 2024-73 providing guidance with respect to Long-Term Part-Time (LTPT) Employees in Internal Revenue Code (“IRC”) Section 403(b) plans subject to ERISA and how those rules interact with the nondiscrimination rules under IRC Section 403(b)(12).

By way of background, 403(b) plans must meet the requirements of IRC Section 403(b)(12)(A)(ii), also known as the ‘Universal Availability’ rule. Universal Availability generally requires that employees are immediately eligible to make elective deferrals to a 403(b) plan. However, certain classifications of employees may be excluded from making elective deferrals to the 403(b) plan, including:

- Employees who normally work less than 20 hours per week;
- Student employees performing services described in IRC Section 3121(b)(10);
- Non-resident alien employees with no U.S. source income as described in IRC Section 410(b)(3)(C); and
- Employees who are eligible to make elective deferrals under another 401(k), 403(b) or governmental 457(b) plan sponsored by the same employer.

The SECURE Act of 2019 (and subsequently updated by the SECURE 2.0 Act) introduced new rules for LTPT employees in 401(k) plans, with the exception of collectively bargained plans. Employees that met the LTPT criteria for an employer’s 401(k) plan were required to be allowed to enter the 401(k) plan for elective deferral purposes beginning on January 1, 2024. The IRS issued proposed LTPT regulations applicable to 401(k) plans only on November 24, 2023. SECURE 2.0 extended the application of LTPT rules to ERISA-covered 403(b) plans. Employees of an employer sponsoring an ERISA 403(b) plan who meet the LTPT criteria are required to be allowed to enter the ERISA 403(b) plan for elective deferral purposes beginning on January 1, 2025.

In general, LTPT rules mandate that part-time employees who are otherwise excluded from the ERISA 403(b) plan because they are “employees who normally work less than 20 hours per week” must be allowed to enter the plan as a LTPT employee for elective deferral purposes if:

the employee has two consecutive years of service in which the employee completes at least 500 hours of service but less than 1,000 hours of service for each year in the twelve-month eligibility service computation period.

The IRS Notice clarifies:

- 1) The LTPT rules do apply to those part-time employees who are excluded from ERISA 403(b) plan participation because “they normally work less than 20 hours per week.” If this classification of employee meets the LTPT criteria outlined above, the employee must be allowed to enter the plan as a LTPT employee for elective deferral purposes. An ERISA 403(b) plan may continue to retain a part-time employee exclusion for part-time employees who do not qualify as LTPT employees under SECURE 2.0.
- 2) The LTPT rules do not apply to those employees who are excluded from the ERISA 403(b) plan based on the following classifications:
 - Student employees performing services described in IRC Section 3121(b)(10)
 - Non-resident alien employees with no U.S. source income as described in IRC Section 410(b)(3)(C)
 - Employees who are eligible to make elective deferrals under another 401(k), 403(b) or governmental 457(b) plan sponsored by the same employer.

- 3) The LTPT rules *do not apply* to Section 403(b) plans that are not subject to ERISA. For example, a governmental 403(b) plan or a non-electing 403(b) church plan is not mandated to comply with LTPT rules.
- 4) An employer sponsoring an ERISA 403(b) plan is not required to provide a matching contribution (or a non-elective contribution) to LTPT employees. If the employer does provide a matching contribution (or a non-elective contribution) to LTPT employees they may exclude those contributions from the required non-discrimination testing.
- 5) If a LTPT employee becomes a *former* LTPT employee (for example, because the employee has worked 1,000 hours in the preceding year and is no longer a part time employee), the employer can no longer exclude a matching contribution (or a non-elective contribution) from the required non-discrimination testing.

The Notice applies for plan years beginning on or after January 1, 2025.

Lastly, the Notice provides the following additional information:

- The anticipated final regulations relating to LTPT employees in 401(k) plans will apply no earlier than plan years beginning or after January 1, 2026.
- The Department of Treasury anticipates issuing proposed regulations with regard to the nondiscrimination and LTPT rules under IRC Section 403(b)(12)(D) and guidance relating to ERISA. It is anticipated that this guidance will be similar to the final 401(k) regulations.
- The Department of Treasury is soliciting comments regarding the Notice content, and the application of LTPT rules for both 403(b) and 401(k) by December 20, 2024.

Voya continues to monitor these and all regulatory developments impacting retirement plans.

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