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February 7, 2023

By Electronic Mail

Ms. Rachel Levy
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Employee Benefits, Exempt Organizations, and Employment Taxes
Internal Revenue Service
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Washington, D.C. 20224

Ms. Carol Weiser
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Office of Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
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Ms. Helen Morrison
Deputy Benefits Tax Counsel
Office of Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Catch-up Contributions Correction

Dear Madams:

The National Association of Government Defined Contribution Administrators (NAGDCA) is writing regarding the omission of certain legislative language in Section 603 of the *SECURE 2.0 Act of 2022* (SECURE 2.0). We appreciate the help that Treasury has provided in clarifying previous issues and look forward to any assistance you can offer on this issue.

NAGDCA governmental members oversee plans for participants from 65 state and territorial government entities and 157 local government entities, including counties, cities, public safety agencies, school districts, and utilities. NAGDCA's members administer governmental deferred compensation and defined contribution plans, including Section 457(b), 401(k), 401(a), and 403(b) plans. The association provides a forum for working together to improve defined

contribution plan operations and outcomes by sharing information on investments, marketing, administration, and the federal laws and regulations governing these plans.

On December 23, 2022, Congress passed SECURE 2.0 as part of a government spending bill (Div. T, H.R. 2617, 117th Cong.). Section 603 of SECURE 2.0 was intended to function as a revenue raising provision by requiring all catch-up contributions made to defined contribution plans be made on a Roth basis, except for those with \$145,000 or less in wages for the prior year. However, as you are aware, a drafting error in the final version of the bill eliminated important text that executes this provision. We recognize that the IRS and Treasury are generally constrained by statutory language but believe there is a path that the IRS and Treasury may look to to resolve this inadvertent error.

Specifically, we submit that Treasury could issue guidance to the public now following the approach it used in Notice 2007-99 with respect to the interpretation of Internal Revenue Code section 402(l) as added by the Pension Protection Act of 2006; that is, that the agency is issuing guidance in expectation of a future legislative correction. This approach is reasonable, as the relevant lawmakers and their staff are aware of this technical error, but may have difficulty finding a timely legislative vehicle to immediately advance such a correction. Further, we submit that enough legislative history exists for Treasury to properly issue guidance stating that it will follow Congressional intent for the provision, rather than the erroneous final text (*see* Senate Finance Committee's plain English section-by-section summary; Joint Committee on Taxation's revenue estimate; Sec. 603, H.R. 2954, 117th Cong.; Sec. 1102, S. 4808, 117th Cong.). Additionally, Treasury could rely on the absurdity principle of statutory construction to arrive at the conclusion that Congress did not intend to pass legislation that is clearly ineffective.

Thank you for your time and consideration. We would be happy to meet with you to discuss this matter further if it would be helpful. Please call David Levine at 202-861-5436, Brigen Winters at 202-861-6618, or the undersigned at 859-469-5789 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Petersen', with a stylized flourish at the end.

Matt Petersen
Executive Director