NAGDCA

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By Electronic Mail

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Re: Proposed Rule: Long-Term, Part-Time Employee Rules for Cash or Deferred Arrangements Under Section 401(k) (REG-104194-23)

Dear Madams:

The National Association of Government Defined Contribution Administrators (NAGDCA) writes to provide comments in response to the Notice of Proposed Rulemaking: Long-Term, Part-Time Employee Rules for Cash or Deferred Arrangements Under Section 401(k) (REG-104194-23). We appreciate the help that the IRS and Treasury has historically provided in clarifying and enhancing the practicality of implementing retirement-related legislation.

NAGDCA governmental members oversee plans for participants from 60 state and territorial government entities and 146 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 Code 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.

The *SECURE 2.0 Act of 2022* (SECURE 2.0, Div. T, H.R. 2617, 117th Cong.) built upon the retirement plan rules for long-term, part-time workers laid out in SECURE 1.0 (the *Setting Every Community Up for Retirement Enhancement Act of 2019*, H.R. 1994, 116th Cong.). Section 112 of SECURE 1.0 established new rules for plan participation by long-term, part-time workers. Section 125 of SECURE 2.0 modified those rules by reducing by one year the required years of service before long-term, part-time workers are eligible to contribute to a plan, effective beginning after December 31, 2024.

Many governmental defined contribution plans provide that the individuals eligible to participate in a governmental 401(k) or 403(b) plan must first be eligible for a governmental defined benefit plan. Some governmental defined benefit and defined contribution plans carve out part-time and other classifications of workers from eligibility. Historically, this has been appropriate as the requirements of Code section 410(a) that prohibit the exclusion of part-time workers once they reach 1,000 hours of service do not apply to governmental plans. Therefore, we strongly assert that rules that are intended to impose further restrictions on participation by part-time workers are likewise not appropriate for governmental plans that never had any such restrictions.

In a comment letter we submitted to you in October 2023, we requested clarification that the addition of long-term, part-time employee eligibility rules in SECURE 1.0 and SECURE 2.0 does not require a governmental 401(k) or 403(b) plan to make a new class of employees eligible for their plans, effectively exempting governmental plans from these new requirements. We greatly appreciate you considering this issue further and for soliciting additional comments before making a final decision that is reflected in the final regulations. However, we reiterate our prior position that these rules should not apply to governmental plans, consistent with the treatment under Code section 410(a). Specifically, our request for an exemption is based on the following strong factors:

- Consistent Code Treatment. Consistent treatment with the application of Code sections 410(a) and 411, and other qualified plan Code protections that are not applicable to governmental plans (such as qualified joint and survivor annuity protections). Moreover, governmental plans have long benefited from special relaxed vesting provisions (with no need to count hours of service), so to extend the special vesting rules to LTPT participants (and now the need to track hours) would be a significant sea-change for these plans.
- Grandfathered Plans. Consistent with the grandfathered treatment of governmental 401(k) plans, as only 401(k) plans established by governmental entities before May 6, 1986 exist, so no new requirements should be imposed on these grandfathered plans.
- Relief Not Applicable. Lack of relief for governmental plans. The nondiscrimination and top-heavy relief provided to nongovernmental employers that are subject to these provisions is irrelevant to governmental plans and there is no benefit or other relief for governmental employers that adopt these provisions.
- Policy Justifications. Strong policy reasons for not mandating particular coverage for governmental plans, whose benefits are often the subject of collective bargaining

agreements and require legislative amendments. Moreover, the burden placed on governmental agencies to use valuable federal, state, and local resources to comply with rules that are completely new and not merely a modification of existing rules. For example, there was no prior requirement of 1,000 hours for enrollment or vesting -- in fact, tracking hours may be a whole new concept for many governmental plan sponsors. Changes to governmental plans are also more difficult because the plan documents are generally part of legislative text and require actions by state legislatures (and governors) that are in session only periodically.

- Impacts Non-401(k)/403(b) Plans. Negative impact on other types of governmental plans. The interplay of these requirements with eligibility and other rules applicable to other types of qualified governmental plans (particularly defined benefit plans) will result in potential real costs for sponsors if these requirements are mandated.

These arguments justify special treatment for governmental plans. But if a full exemption is not granted, we respectfully request a further delay to the effective date to allow our members adequate time to implement this guidance. Governmental plans encounter complexities in local law enabling requirements, payroll systems, and administration that most private sector employers do not face that justifies such a delay. At a minimum, the effective date of these rules should be delayed two additional years beyond any transition period provided to the private sector, as is typical with amendments for other law changes.

Lastly, if the effective date of this provision cannot be changed, we seek broad transition relief similar to that granted for Roth catch-up contributions, and absent that, at the very minimum, a reasonable, good faith compliance standard (similar to what is provided for Code section 401(a)(9) compliance) for this provision due to the complexities and uniqueness of governmental plans.

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,

Matt Petersen
Executive Director