

Ronald Cluett Comments on Possible Technical Corrections to SECURE 2.0 in Tax Notes

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Tax Notes

Key players in the retirement benefits industry remain optimistic that necessary SECURE 2.0 technical corrections remain a priority for Congress and Treasury.

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In a May 23 letter, the chairs and ranking members of the Ways and Means and Finance committees told Treasury Secretary Janet Yellen and IRS Commissioner Daniel Werfel about potential misinterpretations of SECURE 2.0 provisions and said they stood ready to make technical corrections if Treasury is unable to do so administratively.

Ronald G. Cluett of Caplin & Drysdale said the letter “was a positive indication that the need for technical corrections to SECURE 2.0 is very much on the radar of the congressional leadership and enjoys bipartisan support.”

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Cluett said the letter provided “welcome if unsurprising clarity” regarding the SECURE 2.0 provisions. However, he noted that it is probably an insufficient basis for the IRS to issue guidance.

“Legislation is obviously the prerogative of Congress, and the letter explicitly states Congress’ intent to introduce technical corrections legislation to address these, and possibly other, instances of erroneous statutory language,” Cluett said.

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“The worst-case scenario is if Congress fails to act, and the IRS determines that it cannot or should not issue guidance,” Cluett said, adding that it would create “a risk assessment that everyone should agree is both to be avoided, and avoidable.”

According to Cluett, plan sponsors and service providers would have to decide whether to apply SECURE 2.0 with potentially adverse consequences to plan participants or administer plans with a good-faith expectation that the necessary technical corrections would eventually be retroactively enacted.

However, Cluett noted that there are at least two legislative paths for SECURE 2.0 technical corrections: inclusion in a larger legislative package or inclusion in potential tax legislation this year for several other high-profile tax issues that exist on both sides of the aisle.

“If the apparently uncontroversial corrections to SECURE 2.0 could survive the horse-trading over these other tax issues, such tax legislation would be an obvious vehicle for correcting SECURE 2.0,” Cluett said.

For the full article, please visit *Tax Notes*' website (subscription required).

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