

IRS FAQs Provide Guidance on Reemployment of Veterans and Restoration of Plan Benefits

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Retirement plans FAQs regarding USERRA and SSCRA (Nov. 8, 2024)

Available at

<https://www.irs.gov/retirement-plans/retirement-plans-faqs-regarding-userra-and-sscr>

The IRS has updated its FAQs on the reemployment of veterans and the restoration of retirement plan benefits under the Uniformed Services and Reemployment Rights Act (USERRA) and the Soldiers and Sailors Civil Relief Act (SSCRA). While the update does not provide any new guidance, it does provide a summary of the rules applicable to 401(k) plans when veterans are reemployed. Here are points of interest for 401(k) plan sponsors:

- **Employer Contributions.** Employers reemploying veterans must fund pension benefits that the veterans missed due to qualifying service. When calculating makeup contributions and allocations, employers should assume the rehired employee earned compensation at the rate they would have received during their military service. If this rate is not reasonably certain, employers should use the employee's average compensation from the 12-month period immediately preceding the military service period. Employers are required to make these contributions no later than 90 days after the veteran's reemployment or by the usual deadline for plan contributions for the year in which the military service occurred, whichever is later. If employer contributions are contingent upon the employee making elective contributions, then the employer must adhere to the plan's standard requirements for matching contributions once the employee makes up the missed contributions. Rehired employees are not entitled to additional benefits for allocations from forfeitures during their military service, nor are they entitled to lost earnings on makeup contributions.
- **Employee Contributions.** Rehired veterans must be allowed to make up any missed contributions that are required to earn a benefit accrual for the military service period. A rehired veteran has a makeup window equal to three times the length of service, but not exceeding five years, to make up missed contributions. Make-up contributions are subject to the limits that would have applied during the military service period. When military absence exceeds one year, the rehired veteran has the discretion to designate which specific year or years the makeup contributions will cover. In 401(k) plans, it is up to the employee to determine whether contributions are makeup contributions for past service periods or current deferrals.
- **Plan Loans.** Plans may permit the suspension of plan loan repayments for participants engaged in military service. When their military service ends, these veterans must resume their loan repayments, ensuring that the payment frequency and amounts are at least equal to those established prior to their military service. The full loan amount, including interest accrued during the military service period, must be repaid by the end of the original loan term, as extended by the military service period.

- **W-2 Reporting.** If an employee returns to employment after military service and certain make-up amounts were contributed to a pension plan for a prior year (or years) under USERRA, prior year contributions are reported separately in Box 12 using code D. Plans also report makeup nonelective contributions, voluntary after-tax contributions, required employee contributions, and employer matching contributions in Box 14, reporting each amount separately for each year. [EBIA Comment: The FAQs include incorrect page numbers for the W-2 instructions; plan sponsors should refer to pages 15, 21, and 22 of the most recent instructions for information on how to report makeup contributions. Also, the FAQs do not mention that, instead of reporting in Box 12 (or Box 14), plans may choose to provide a separate statement to employees showing USERRA make-up contributions. The statement must identify the type of plan, the year (or years) to which the contributions relate, and the amount contributed for each year.]

EBIA Comment: The special rules relating to an employee's USERRA rights to make up benefits under qualified plans upon reemployment are found in Code § 414(u). Except for the loan suspension rules, the IRS has not issued any regulations under the Code provision but has stated its interpretation of USERRA's qualified plan requirements on its website and in other informal guidance, which is why plan sponsors should carefully review any USERRA FAQs released or updated by the IRS. Although FAQs provide crucial and timely guidance that can help taxpayers understand tax laws, tax professionals view them with a degree of caution since they are neither precedential nor binding on the IRS and may be deleted or modified at any time without any official record of prior versions. Keep in mind that USERRA generally is administered by the DOL, through the Veterans' Employment and Training Service, and the DOL has issued general guidance for veterans as well as FAQs on health and retirement benefits for reservists called to active duty. For more information, see EBIA's 401(k) Plans manual at Sections IX.F ("USERRA: Make-Up Contributions"), XVI.M ("Special Rules for Participants on Military Leave"), and XXXIX.F ("Make-Up Deferrals and Contributions").

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