



November 4, 2024

Submitted via www.regulations.gov

Internal Revenue Service
Attn: CC:PA:01:PR (Notice 2024-65)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

**RE: Request for Comments Regarding Implementation of Saver's Match
Contributions (Notice 2024-65)**

Dear Sir/Madam:

The American Benefits Council ("the Council") appreciates the opportunity to respond to the request for comments in Notice 2024-65 that was issued by the U.S. Department of the Treasury and the Internal Revenue Service (collectively, "Treasury") regarding the implementation of Saver's Match contributions.

The Council is a Washington, D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and their families. Council members include over 220 of the world's largest corporations and collectively either directly sponsor or support sponsors of health and retirement benefits for virtually all Americans covered by employer-provided plans.

The Council was proud to strongly support the SECURE 2.0 Act of 2022 ("SECURE 2.0"), including the many provisions that Congress enacted to further improve retirement security for low- and moderate-income individuals in particular. One of the most significant provisions in this regard is the Saver's Match,¹ which applies to taxable

¹ Section 103 of SECURE 2.0 created the Saver's Match by adding new section 6433 to the Internal Revenue Code (Code).

years beginning after December 31, 2026, and generally replaces the current-law Saver's Credit. Very generally, the Saver's Match is a government matching contribution of up to \$1,000 per taxable year that will be available to certain individuals who make qualified retirement savings contributions to a plan or IRA. The Saver's Match may only be received as a pre-tax contribution to a 401(k), 403(b), or governmental 457(b) plan or a traditional IRA that is elected by the individual. Importantly, an individual may elect to have a Saver's Match contribution made to a plan or IRA only if that plan or IRA accepts Saver's Match contributions – an aspect of the new program that is central to many of our comments below.

We appreciate that developing and implementing the Saver's Match is a very complex endeavor requiring the collective efforts of the federal government, service providers, plan sponsors, IRA providers, and numerous other stakeholders. We further appreciate that, among other goals, Treasury indicates in Notice 2024-65 that it seeks to implement the program in a manner that will encourage retirement plans to accept Saver's Match contributions. Because plan sponsors may choose whether or not to accept these contributions, it is critical to the success of the program that any financial, administrative, and fiduciary burdens be minimized so as to incentivize plan sponsor participation. In this regard, we hope that our comments below, which we offer primarily from the perspective of a plan sponsor, will be helpful as Treasury continues its efforts to implement the Saver's Match. We also look forward to providing additional feedback in the future as the Saver's Match program continues to take shape.

KEY PLAN SPONSOR CONSIDERATIONS IN DECIDING WHETHER TO ACCEPT SAVER'S MATCH CONTRIBUTIONS

In deciding whether to accept Saver's Match contributions into a plan, plan sponsors will ultimately need to evaluate the program in its entirety once the program is fully developed and after Treasury issues any final guidance relevant to plan sponsors. We believe, however, that the following considerations will be particularly important in plan sponsors' decisions regarding the acceptance of Saver's Match contributions.

Minimizing HR Burdens

As a new, complex program, the Saver's Match will inevitably generate questions from employees regarding all aspects of the program. No matter how much effort Treasury and other stakeholders may put into providing individuals with information, education, and tools regarding the Saver's Match, we anticipate that in many cases employers' human resources ("HR") departments will serve as the front line in assisting employees. We expect that employees will ask HR whether they are eligible for the Saver's Match and how the employee should complete the appropriate tax form to ensure that the contribution is directed back to the plan and into the employee's account. We also expect HR will be asked to confirm that the Saver's Match will be

accepted and to assist in situations where the Saver's Match may be misdirected. As one example, imagine as part of a terminating employee's exit interview the employee points out that the employee designated the plan as the destination of a Saver's Match contribution and has questions about whether the Saver's Match contribution will be lost.

In this regard, we emphasize just how critical it is for Treasury to keep the Saver's Match program as simple as possible. Creating a simple, straightforward process for individuals to claim the Saver's Match that requires only minimal and easily obtainable information will be key not only in minimizing the Saver's Match burden on HR employees, but also in ensuring that HR can quickly and easily provide assistance when asked.² Plan sponsors that consider accepting Saver's Match contributions will need to weigh the additional burdens on HR that will be expected to result from such a decision.

Along these lines, it will also be important for the program to be very clear that participants (or IRA owners) have sole responsibility for claiming the Saver's Match.

Option to Cease Accepting Contributions

Please issue guidance confirming that a plan's decision to accept Saver's Match contributions is not a protected benefit within the meaning of Code section 411(d)(6) so that a plan that decides to accept such contributions may later choose to stop accepting them. We anticipate that plan sponsors will be much more willing to accept Saver's Match contributions if they retain the option to reverse that decision in the future. Of course, if through the collective efforts of the federal government and other stakeholders the Saver's Match process is relatively seamless, then we would anticipate that plan sponsors will not want to reverse that decision.

Minimizing Small Accounts and Unconnected Contributions

Many plan sponsors will be hesitant to accept Saver's Match contributions if doing so is likely to lead to an increase in the plan's number of small accounts or the receipt of contributions that are not connected to an individual who is a current participant in the plan. For many years, plan sponsors have dealt with the problem of missing and unresponsive participants. We have urged the Department of Labor to issue a safe harbor setting forth what plan sponsors must do to try to find missing participants. In addition, Treasury has had a longstanding project to provide guidance on the tax issues

² With respect to the development of a claims process, we note that a simple, streamlined process should be achievable because the IRS will generally already have the income information necessary to determine an individual's eligibility to receive a Saver's Match contribution, as well as information regarding the individual's plan or IRA contributions for purposes of determining the amount of the Saver's Match contribution to which the individual is entitled. We assume that individuals will be required to file a Form 1040 or other form with the IRS to facilitate these determinations.

associated with missing participants, but only minimal guidance has been provided to date. In short, plan sponsors continue to be very concerned about the liability and administrative challenges associated with small accounts.

Thus, it will be critical to plan participation that the Saver's Match program be designed in a manner that:

- minimizes the transmission of very small contribution amounts to accepting plans;
- reduces the likelihood that an individual will elect to have their Saver's Match contributed to a plan in which they are no longer a participant;
- offers plan administrators an opportunity to review a list of Saver's Match recipients prior to receiving the government contributions; and
- provides a clear, simple process through which plans may return any funds that cannot be matched to a current participant.

We appreciate that Treasury is clearly giving thought to these and similar considerations, including the prospect of sending a "preview" list to a plan for review prior to Treasury's remittance. Minimizing plan sponsor burdens in these regards will be critical to many plan sponsors' decision to accept Saver's Match contributions.

To help address some of these anticipated plan sponsor challenges with small accounts and Saver's Match contributions that are not connected to a participant, some plan sponsors may find it helpful to be allowed to impose reasonable limitations on their acceptance of Saver's Match contributions. For example, plan sponsors could be more willing to accept Saver's Match contributions if they may limit acceptance of such contributions to those above a particular dollar amount, or contributions that are made on behalf of employees who are eligible to make elective contributions as of a certain date (e.g., the date on which Saver's Match contributions are allocated). In addition, one Council member has suggested that Treasury consider reestablishing the *MyRA* program to receive these small and unconnected amounts.

Fiduciary Protection

A plan sponsor's involvement with the Saver's Match could be considered part of plan administration, but we are concerned there is also a risk that it could be viewed as tax advice. To the extent that certain actions may be required (or asked) of plan sponsors, such as providing an explanation of the Saver's Match program to employees, or providing information about how to complete the individual's tax return to ensure the Saver's Match is directed to the right place, it would be helpful for the Department of Labor and Treasury to provide fiduciary protection and model notices for plan sponsors to protect them from being viewed as giving tax or investment advice. This is

particularly important with respect to questions regarding an employee's eligibility to receive a Saver's Match contribution because employers will not have full information about the employee's household income and therefore cannot advise on whether an individual is eligible for the Saver's Match.

PROCESS AND OTHER PLAN SPONSOR CONSIDERATIONS

In addition to the threshold concerns discussed above, we describe below some of the process-related and other considerations that will be important for those plan sponsors that choose to accept Saver's Match contributions.

Plan Amendments

Plan sponsors will need sufficient time to amend their plans after electing to receive Saver's Match contributions. Because the earliest Saver's Match contributions will not be transferred to plans until 2028 (with respect to qualified retirement savings contributions made in 2027), the general amendment deadline for SECURE 2.0 provisions as provided in Notice 2024-2 will not work for the Saver's Match. We ask that Treasury issue guidance providing a remedial amendment period extending through the last day of the second plan year that begins on or after a plan elects to accept Saver's Match contributions, or if later, when it appears on the Required Amendments List.

Transfer Process and Plan/Participant Account Identification

Treasury asks in Notice 2024-65 whether any issues would arise if each Saver's Match contribution was sent to a plan or IRA via a separate ACH transaction, similar to the manner in which electronic tax refunds are delivered. Although the ACH system may serve as a helpful model in some regards, it is very important to recognize that plans generally do not have a bank account associated with the ACH system for the plan, nor do participants have routing and account numbers under the ACH system. There may be some very large plans that maintain a bank account with a routing and account number to process transactions, but this would be the exception. The plan's service provider would generally have a bank account with an ACH routing and account number, but this would not be associated with a particular plan. This makes the ACH system – without modification – unworkable for Saver's Match contributions in the plan context. Adding to this complexity, plans do not have a uniform method of assigning participant account numbers or plan numbers, and there are further considerations for non-ERISA plans that do not file Form 5500 and thus do not necessarily follow any standardization with respect to plan numbers. Because this is a problem that will likely need to be solved by service providers, we recommend Treasury take into account the comments it receives from services providers on how to solve this challenge.

Model Notices

If plan sponsors are required to provide an explanation or other information to participants regarding the Saver's Match, please provide model language and/or a model notice that plan sponsors may use. Please also provide that any such notice may be bundled with other plan notices and distributed electronically.

Use of Plan Assets

We recommend that Treasury work with the Department of Labor to confirm that plan assets may be used to pay for administration associated with receiving the Saver's Match and to provide participant education regarding the Saver's Match.

Treatment of Saver's Match Contributions

The statute provides that Saver's Match contributions may not be used for hardship distributions or unforeseeable emergency distributions from 401(k), 403(b), or governmental 457(b) plans, as applicable. Please issue guidance confirming the treatment of Saver's Match contributions for other purposes, such as with respect to their availability for plan loans and in-plan Roth conversions.

Erroneous Saver's Match Contributions

Plans will need guidance on handling erroneous Saver's Match contributions, including clarification that these distributions can be adjusted for losses. Although the statute allows plans to distribute erroneous contributions, it does not specify whether plans are required to do so or to whom the distribution can or must be made. Will Treasury notify plans of erroneous contributions? Will plans be expected to return an erroneous contribution to Treasury? Or could plans distribute the erroneous contribution to the associated participant? How will plans report these distributions?

Recontribution of Specified Early Distributions

Recipients of a Saver's Match who take distributions that are subject to the 10% early withdrawal penalty may owe an additional Saver's Match recovery tax. These individuals may reduce the amount of the Saver's Match recovery tax by recontributing a portion of the distribution by the individual's tax filing deadline. Plans that choose to accept the Saver's Match will need to know whether they must also accept these recontributions.

Rollovers that Include Amounts Attributable to Saver's Match

Treasury will need to provide guidance for plans that accept rollovers from other retirement savings vehicles but *do not* accept Saver's Match contributions. In some cases, rollovers could include amounts attributable to Saver's Match contributions. Will these

receiving plans be able to refuse to accept the portion of a rollover from another retirement savings vehicle attributable to Saver's Match (similar to plans without Roth features not having to accept rollovers of Roth amounts)? Otherwise, these plans may have to stop accepting rollovers entirely.

MISCELLANEOUS ITEMS

MEPs and PEPs

Please confirm that the plan administrator of any type of multiple employer plan (MEP), including a pooled plan provider in the case of a pooled employer plan (PEP), may either (1) determine whether to accept Saver's Match contributions with respect to all participants in the plan or (2) allow each participating employer to elect whether to accept Saver's Match contributions with respect to their employees.

Non-Calendar-Year Plans

As the Saver's Match program takes greater shape, please consider the implications for any plan whose plan year is not the calendar year, such as whether any specific guidance or instructions will be necessary with respect to the reporting of aggregate Saver's Match contributions on Form 5500.

Reporting

Please confirm that non-electing church plans are not required to provide reporting under section 103(c)(2) of SECURE 2.0 ("Section 103(c)(2)"). This section requires the Secretary of the Treasury to "amend the forms relating to reports required under section 6058 of the Internal Revenue Code" (which requires the filing of Form 5500). As noted earlier, non-ERISA plans do not file Form 5500. Section 103(c)(2) does not specifically impose reporting requirements on non-electing church plans, although it does impose such requirements on individual retirement accounts and individual retirement annuities.

In accordance with the First Amendment principles supporting the exemption of church plans from the Form 5500 reporting requirements, we recommend that the reporting requirements under Section 103(c)(2) not be extended to non-electing church plans. Such reporting is unlikely to have any impact on the aggregate contributions reported, and Treasury will know the total contributions it has made to all plans, so such reporting also is unnecessary.

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Thank you for considering the Council's comments on Notice 2024-65. If you have any questions or if we can be of further assistance, please contact me at 202-289-6700 or DHowland@abcstaff.org.

Sincerely,

A handwritten signature in black ink, appearing to read "DHowland", with a large, stylized loop at the end.

Diann Howland
Vice President, Legislative Affairs