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SECURE 2.0 Act Reshapes Puerto Rico Retirement Savings Rules

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Puerto Rico benefits expert Carlos Gonzalez addresses which of the SECURE 2.0 Act's main changes to the US retirement plan rules must be made to Puerto Rico-only qualified plans or applied to the Puerto Rico participants in dual-qualified plans, and which are optional.

Puerto Rico and the IRS recently released two developments regarding the **SECURE 2.0 Act of 2022** that will affect the administration of Puerto Rico retirement plans. Whether the act applies depends on whether the retirement plans are qualified US-based plans that cover US and Puerto Rico participants, **dual-qualified plans**, Puerto Rico-based plans that only cover Puerto Rico participants, **Puerto Rico-only qualified plans**, or Puerto Rico church plans or plans without common law employees, which are known as **Keogh plans**.

SECURE 2.0 Act Changes to Catch-Up Contributions

Effective starting in 2025, SECURE 2.0 Act §109 allows, but does not require, sponsors of US **401(k)** plans to amend their plans to permit eligible participants (who turn 60 to 63 in the calendar year) to make catch-up contributions (up to either \$10,000 or 150% of the regular catch-up contribution limit, whichever is greater). The increased amounts will be indexed for inflation after 2025. For example, catch-up eligible participants who turn ages 60 to 63 as of the end of 2025 may contribute up to an additional \$11,250 for 2025 (i.e., 150% of \$7,500, the 2024 regular catch-up limit).

And SECURE 2.0 Act §603 provides that certain eligible participants' (whose FICA wages from the plan sponsor or participating employer exceed \$145,000, as adjusted for the cost-of-living, for the immediately preceding calendar year)

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catch-up contributions under Internal Revenue Code [§414\(v\)\(1\)](#) must be designated as Roth (after-tax) contributions pursuant to an employee election.

PRIRC Rules on Catch-Up Contributions

Under the Puerto Rico Internal Revenue Code of 2011, as amended, the [PRIRC](#), bona fide residents of Puerto Rico who are 401(k) plan participants (Puerto Rico-only and dual-qualified retirement plans):

- Have an annual catch-up contribution limit of only \$1,500 (without cost-of-living adjustments) (PRIRC §1081.01(d)(7)(C)(i)); and
- Roth contributions are not recognized, nor provided for.

Retirement Plans Background

Except for church plans and plans without common law employees, known in Puerto Rico as “Keogh plans,” all private employer retirement plans in operation in Puerto Rico are subject to the provisions of Title I of the Employee Retirement Income Security Act of 1974, as amended. [ERISA](#) §3(10).

US-based retirement plans that cover US and Puerto Rico participants, dual-qualified plans, are subject to the following retirement plan qualification requirements:

- With regard to all participants-
 - Code §401(a);
 - ERISA; and
 - Code changes enacted by the SECURE 2.0 Act (even amendments not related to ERISA provisions).
- Solely with respect to Puerto Rico participants, the retirement plan qualification requirements of §1081.01(a) of the PRIRC.

Puerto Rico-based retirement plans that only cover Puerto Rico participants, Puerto Rico-only qualified plans, are subject to the following retirement plan qualification requirements:

- ERISA; and
- PRIRC §1081.01(a); but
- Not Code §401(a) (*See, e.g.,* [IRM 4.71.21.6\(2\)](#) (Feb. 16, 2024)); and
- Not Code changes enacted by the SECURE 2.0 Act, unless the amendments relate to ERISA provisions.

Because SECURE 2.0 Act §107, *Increase in Age for Required Beginning Date for Mandatory Distributions*, amended Code §401(a)(9)(C) but not ERISA, this change applies to dual-qualified plans but not to Puerto Rico-only qualified plans. And since SECURE 2.0 Act §125, *Improving Coverage for Part-Time Employees*, amended ERISA §202(c) and §203(b), all ERISA-covered retirement plans in operation in Puerto Rico must comply with this change. For more information about this subject, see Carlos Gonzalez, *How SECURE 2.0 Provisions Apply to Puerto Rico Retirement Plans*, [64 Tax Mngmt. Memo. 19](#) (Aug. 8, 2023).

Church plans and plans without common law employees, or “**Keogh plans**,” however, are exempt from adopting changes to ERISA and the Code enacted by the SECURE 2.0 Act. In practice, however, that is not always the case.

Hacienda Developments

On August 26, 2025, the Puerto Rico Treasury Department, commonly known as “Hacienda,” issued Administrative Determination [No. 25-03](#) providing that the adoption of amendments by qualified retirement plans in operation in Puerto Rico (both dual-qualified and Puerto Rico-only qualified plans) to comply with the SECURE 2.0 Act of 2022 changes to ERISA and/or the Code do not have to be filed with Hacienda for their administrative review.

For example, pursuant to SECURE 2.0 Act §501, profit-sharing plans with a cash-or-deferred arrangement (i.e., 401(k) plans) must be formally amended by the last day of the first plan year beginning on or after January 1, 2025 (i.e., December 31, 2025, for calendar year plans) to incorporate the new long-term part-time employee participation requirements of SECURE 2.0 Act §125. But pursuant to AD 25-03, such amendments should not be filed with the Hacienda and, if for any reason they are filed, in all likelihood a Hacienda official will not review or issue a favorable determination letter on their local qualification.

All-in-all, this is good news for plan sponsors because, with regards to their SECURE 2.0 Act related plan amendments, they are officially spared from having to complete a Hacienda filing, which, among other things, requires the payment of a \$350 filing fee.

IRS Developments

On September 16, 2025, the US Department of the Treasury and the IRS issued [final regulations](#) on, among other matters, the changes to the catch-up contribution rules of Code §414(v) enacted by SECURE 2.0 Act §109 and §603 .

Under Treasury regulations, dual-qualified 401(k) plans:

- May limit catch-up contributions by their Puerto Rico participants to the maximum amount set forth by the PRIRC (i.e., \$1,500 per year). [Reg. §1.414\(v\)-1\(e\)\(1\)\(iii\)](#); and

- Exempts Puerto Rico participants from the requirement that catch-up contributions by highly-paid participants be designated as Roth contributions. [Reg. §1.414\(v\)-2\(a\)\(6\)](#).

Accordingly, dual-qualified 401(k) plans can safely and validly limit catch-up contributions by their Puerto Rico participants to a maximum of \$1,500 per year, always on a pre-tax basis. PRIRC §1081.01(d)(7)(C)(i).

To avoid inadvertent problems down the line, sponsors of dual-qualified 401(k) plans should contact their recordkeepers to confirm that they are able to comply with these Puerto Rico-related exceptions. Summary Plan Descriptions or online account information should not indicate, or give the impression, that Puerto Rico participants can contribute above the local limit.

The preamble to the Treasury regulations aptly notes that these Puerto Rico-related exceptions to the changes to the US catch-up contribution rules enacted by SECURE 2.0 are consistent with previous administrative guidance on the subject. *See Preamble fn. 15.* When Puerto Rican tax laws did not provide for any sort of catch-up contributions, [Notice 2002-4](#) allowed dual-qualified 401(k) plans to exclude their Puerto Rico participants when determining their compliance with the universal availability requirement of Code §414(v)(4) (i.e., the general rule that catch-up contributions be available on the same terms and conditions to similarly situated participants). In addition, the Joint Committee on Taxation's report explained that, in general, "Federal law does not require that the income tax laws in force in the United States also be in force in...Puerto Rico." [JCX-132-15](#), *Federal Tax Law and Issues Related to the Commonwealth of Puerto Rico*, p. 26 (Sept. 28, 2015).

Keogh or Non-ERISA Plans with Pre-Approved Documents

Technically, the changes to ERISA and the Code enacted by the SECURE 2.0 Act do not apply to Puerto Rico, only qualified plans that are exempt from ERISA, such as local church plans and Keogh plans. In practice, however, that is not always the case. As in the US, for cost, simplicity, and efficiency reasons, the sponsors of local church plans and Keogh plans oftentimes establish and maintain their plans through the adoption of a master and prototype plan qualified with the Hacienda (i.e., the Puerto Rico equivalent to a US pre-approved plan). In that case, the adopting plan needs to be operated in accordance with the terms and conditions of the basic or official plan document prepared by the local recordkeeper, third-party administrator, or financial institution that sponsors, sells, and administers the master and prototype plan.

Most, if not all, of the local service providers that offer master and prototype plans in Puerto Rico have drafted their official plan documents in accordance with ERISA, and by now, they have incorporated the SECURE 2.0 Act changes to ERISA into their plan documents and administrative or recordkeeping practices and procedures. These businesses are not making exceptions or special rules for clients with non-ERISA plans. Instead, they follow a one-size-fits-all approach for complying with ERISA. Therefore, church plans and Keogh plans established and maintained through the adoption of a

local master and prototype plan are having to incorporate and comply with the post-SECURE 2.0 Act ERISA provisions, including, but not limited to, the new long-term part-time employee participation requirements of SECURE 2.0 Act §125, which are proving to be the most time-consuming SECURE 2.0 Act changes to comply with.

Sponsors of local church plans and Keogh plans interested in avoiding such ERISA provisions should consider replacing their current master and prototype plan adoption with an individually designed plan document that is free of ERISA provisions.

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