



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

April 10, 2024

via Email

Dear Tribal Leader:

On behalf of the U.S. Department of the Treasury (Treasury), I invite you to a consultation on a Notice of Proposed Rulemaking (NPRM) that was published on November 27, 2023. The NPRM is entitled “[Long-Term, Part-Time Employee Rules for Cash or Deferred Arrangements Under Section 401\(k\)](#)” (REG-104194-23) and would provide guidance on the treatment of long-term, part-time (LTPT) employees in section 401(k) plans. The consultation will be held virtually on May 17, 2024, 1:00 - 3:00 p.m. ET. [You may register for the consultation here.](#)

***Background:***

Many Tribal governments provide a retirement plan as an incentive to attract and retain employees. Internal Revenue Code (IRC) section 401(k)(4)(B)(iii) provides that Tribal governments may sponsor section 401(k) plans, which are qualified cash or deferred arrangements. Under IRC section 414(d), a governmental plan includes a plan established and maintained by a Tribal government if all the participants in the plan are employees of the Tribal government substantially all of whose services are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential governmental function). Generally, a governmental plan within the meaning of IRC section 414(d) is not subject to the vesting requirements under section 411 (although the plan would be subject to the pre-ERISA vesting requirements).<sup>1</sup>

The Long-Term, Part-Time Employee Rules for Cash or Deferred Arrangements Under section 401(k) NPRM contains a proposed regulation that would reflect statutory changes made by section 112 of the SECURE Act<sup>2</sup> (as amended by section 125 of the SECURE 2.0 Act).<sup>3</sup> The proposed regulation includes provisions that Tribal retirement plans and other employers will need to consider.

Section 112 of the SECURE Act requires employers to allow LTPT employees to participate in their section 401(k) plans. The provision generally provides that employers maintaining a section 401(k) plan must allow employees who are at least age 21 to enroll once the employee completes either one year of service (determined under the

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<sup>1</sup> As defined in IRC section 414(d), see [https://www.irs.gov/pub/irs-tege/directive\\_vesting\\_043012.pdf](https://www.irs.gov/pub/irs-tege/directive_vesting_043012.pdf)

<sup>2</sup> SECURE Act, Division O of the Further Consolidated Appropriations Act, 2020, P.L. 116-94.

<sup>3</sup> SECURE 2.0 Act, Division T of the Consolidated Appropriations Act, 2023, P.L. 117-328.

long-standing 1,000-hour rule) or three consecutive years of service (determined based on whether the employee completes at least 500 hours of service). section 125 of the SECURE 2.0 Act reduces the three consecutive years of service (with at least 500 hours of service each year) to two consecutive years of service, effective for plan years beginning in 2025. Employers are not required to make nonelective or matching contributions for LTPT employees even if those contributions are made for other eligible employees. Under the NPRM, plans generally would be able to exclude classes of employees from participation unless the exclusion has the effect of imposing an age or service requirement (such as an exclusion for part-time, temporary, or seasonal employees).

The NPRM also includes vesting requirements with respect to LTPT employees who become eligible to participate in the section 401(k) plan solely on account of this new rule. Put simply, “vesting” in a retirement plan means that each employee will vest, or own, a certain percentage of their account in the plan after the completion of a specified number of years of vesting service. Under section 112 of the SECURE Act, an LTPT employee generally must be credited with a year of vesting service for each 12-month period during which the employee has a least 500 hours of service. Amounts that are not vested may be forfeited by employees when they are paid the vested portion of their account balance.

***Consultation Content:***

Pursuant to [Executive Order 13175](#), President Joseph R. Biden’s Presidential Memorandum for Tribal Consultation and Strengthening Nation to Nation Relationships; the Presidential Memorandum on Uniform Standards for Tribal Consultation; and Treasury’s [Tribal Consultation and Coordination with Tribal Nations Policy](#), Treasury is commencing Tribal consultation on this NPRM.

Specifically, Treasury and the IRS request the assistance of Tribal leaders in addressing all aspects of the NPRM that may have an impact on Tribal governmental plans, including the following topics:

1. Comments are requested on the direct cost of complying with the requirement that LTPT employees be permitted to participate in a Tribal governmental section 401(k) plan (taking into account that employers are not required to make matching or nonelective contributions for LTPT employees).
2. The proposed regulation confirms that an employee, who otherwise would be an LTPT employee, can be excluded from the plan if the employee is part of an excluded employee class. However, excluding a class of employees cannot be a proxy for an impermissible service or age requirement. What questions or feedback do you have regarding that limitation on the classes of employees that may be excluded?

For example, if a plan sponsored by the Tribal Parks Department ordinarily excludes employees classified as “Camp Coordinators,” all of whom work seasonally, is there a question as to whether these employees could be excluded from participating under the NPRM?

3. An LTPT employee must be credited with a year of vesting service for each 12 -month period during which the employee has a least 500 hours of service, which may differ from a Tribe’s method of determining vesting.

For example, according to the Tribe’s HR policy, a full time Tribal government employee must work at least 1,000 hours during a year to receive a year of vesting service, while a Camp Coordinator who qualifies as an LTPT will need just 500 hours to receive a year of vesting service. What are the potential impacts of this for Tribal employers?

4. What other questions or feedback do you have about any other aspects of the NPRM that are not covered by the above topics?

[Register here for the consultation.](#)

We respectfully request that each Tribe register one person to participate in the consultation. All others are welcome to register as listen-only participants.

In addition to Tribal consultation, Treasury is accepting written or electronic comments received by Monday, June 17, 2024 at 11:59 p.m. Alaska Time. Written comments should be sent to [tribal.consult@treasury.gov](mailto:tribal.consult@treasury.gov).

**Please note that consultations are off the record and not for press purposes.**

We will send out an Agenda and a list of registered speakers before the consultation.

We hope that you will be able to join us for this important discussion and value your participation.

Sincerely,

Chief Lynn Malerba  
Treasurer  
U.S. Department of the Treasury