



STATE OF WISCONSIN
Department of Employee Trust Funds
A. John Voelker
SECRETARY

Wisconsin Department
of Employee Trust Funds
PO Box 7931
Madison WI 53707-7931
1-877-533-5020 (toll free)
Fax 608-267-4549
etf.wi.gov

Correspondence Memorandum

Date: February 12, 2024

To: Deferred Compensation Board

From: Shelly Schueller, Director
Wisconsin Deferred Compensation Program

Dan Hayes, Attorney
Office of Legal Services

Subject: SECURE 2.0 Update as of February 2024

This memo is for informational purposes only. No Board action is required.

This memo provides an update on two provisions of SECURE 2.0 that will be reviewed at the Board meeting on March 7, 2024.

SECURE 2.0 Section 326

This section creates an exception to the ten percent (10%) early withdrawal penalty for distributions to individuals who have an illness or condition that is expected to result in death in 84 months or less, as certified by a physician. Plan sponsors have been waiting for details from the IRS such as how the physician certification process must operate.

The WDC and other section 457 plan sponsors are now waiting for the resolution of conflicting guidance regarding section 457 plan eligibility to utilize section 326.

- In early December 2023, Congress released draft technical legislation ([OTT23197 G9R](#)) intended to correct several drafting mistakes and other oversight errors in SECURE 2.0. Among other things, this legislation includes clarifications related to terminal illness distributions. Bill sponsors are expected to try adding a final measure sometime in 2024 to larger, must-pass legislation.
- In late December 2023, the IRS issued [notice 2024-2](#), aka the “Grab Bag Notice.” Notice 2024-2 indicates what must be included in a physician’s terminal illness certification. It also states that there is no limit to the amount that can be withdrawn under this provision and provides that an employee may (but is not required to) recontribute the amount withdrawn.

Reviewed and approved by Shirley Eckes, Deputy Secretary
Electronically Signed 02/26/2024

Board	Mtg Date	Item #
DC	03.07.24	8

However, Notice 2024-2 also stated that section 457 plans are not eligible to offer the section 326 distribution option to participants with terminal illnesses. This would be corrected with the draft legislation released by Congress so that section 457 plans could offer the section 326 distribution option.

SECURE 2.0 Section 501

This section provides that the deadline to amend an eligible governmental plan is the later of:

- (1) December 31, 2029, or
- (2) if applicable, the first day of the first plan year beginning more than 180 days after the date of notification by the Secretary that the plan was administered in a manner that is inconsistent with the requirements of section 457(b) of the Code.

The Board has been proactive in revising the WDC Plan and Trust to meet SECURE 2.0 requirements including the deadline requirements of this section.

As previously noted during the SECURE 2.0 update at the December 2023 Board meeting [[Ref. DC I 12.07.23 I 7](#)], additional guidance that resolves implementation questions including those related to clarifying various terms and distribution repayment methods is necessary before the Board contemplates any further action on SECURE 2.0. ETF will continue to monitor developments related to the optional portions of SECURE 2.0 and provide updates to the Board.

Staff will be at the Board meeting to answer any questions.