



National Payroll Reporting Consortium

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December 14, 2017

Ms. Katie Selenski, Executive Director
California Secure Choice Retirement Savings Investment Board
915 Capitol Mall, Room 435
Sacramento, CA 95814
Via email: SecureChoice@treasurer.ca.gov

Re: Review of Draft Regulations

Dear Ms. Selenski:

We are writing to offer recommendations for the draft California Secure Choice Retirement Savings program regulations. The National Payroll Reporting Consortium (“NPRC”) is a non-profit trade association whose member organizations provide payroll processing and related services to nearly two million U.S. employers, representing over 36% of the private sector workforce. Payroll service providers have long served an important role as a conduit between employers and government authorities; e.g., improving the efficiency of government tax collections and reporting through electronic payment and reporting programs, and improving employer compliance.

NPRC is neutral as to policy questions such as whether a mandatory approach is necessary with respect to retirement savings programs, but we serve to offer industry expertise to government policymakers as to employer payroll administration and related reporting obligations.

Roth versus Traditional IRA Accounts

We have heard of concerns from employers and payroll administrators regarding the possibility that Secure Choice may permit accountholders to maintain either Roth or traditional IRA accounts; i.e., that this might complicate employer responsibilities. However, there seems to be no difference in how the employer would handle withholding calculations or reporting.

In accordance with Publication 5487, Payroll Deduction IRAs (a joint publication of the U.S. Department of Labor Employee Benefits Security Administration and IRS), employers are to calculate and withhold both Roth and traditional IRA deductions on a post-tax basis. For income tax withholding calculations and reporting, wages subject to federal income tax withholding are not reduced by any traditional IRA deductions from payroll. The employee will deduct traditional IRA contributions on their annual income tax return.

Additionally, employers do not report Roth or traditional IRA contributions on Form W-2. The financial institution will handle the annual report of IRS contributions on IRS Form 5498. In terms of reporting, employers are only required to display current deduction amounts on pay statements (AKA pay stubs), and some employers may display year-to-date total contributions.

Roth IRAs have income limits, but employers are not in position to monitor and administer such limits.

*Automatic Data Processing ★ BenefitMall/CompuPay ★ Ceridian
Fidelity Employer Services Company LLC ★ Gusto ★ Intuit ★ MPay ★ Paychex ★ Paycor
Paycom ★ Paylocity ★ Payroll People ★ PrimePay ★ Ultimate Software*



Employers are unaware of family income as well as any income from prior or concurrent employment in the same year. As a result, employers may, as a courtesy, notify employees that appear to be approaching income limits, but clearly the employee and financial institution would be primarily responsible for compliance with income limits.

Similarly, employers may track total deductions to ensure that no more than \$5,500 is deducted in any year, but again, employers are unaware of family income and other income from prior or concurrent employment, so employees and financial institutions would be primarily responsible. The \$5,500 limit is the same for Roth and Traditional IRAs.

We also heard from the financial institution that is handling the OregonSaves payroll deduction IRA program that it is unlikely that a financial institution would ever require an employer to identify the account type (Roth/Traditional IRA) within IRA contribution remittances. The Oregon program will feature separate account numbers for Roth IRAs versus Traditional IRAs, so there would be no need for an employer or payroll administrator to note Roth vs Traditional on contributions or the ACH addenda record (electronic payment posting instructions). We believe that this would also be the case with similar IRA programs in other states.

The tax status of an account is between the accountholder and Financial Institution. Although it is possible that an employee could have an active Roth and Traditional account with the same financial institution, the employer would only be provided with the account to be credited, or would merely report the employee's Social Security Number. Consequently, our assessment is that it would not be problematic for employers in any material respect if the Secure Choice program were to offer participants the choice of a Roth or Traditional IRA account.

Default Option - Roth versus Traditional IRA

Assuming both Roth and Traditional IRA accounts are eventually permitted, we would recommend that Roth be the default option. One of the great unknowns with Secure Choice is the impact of the opt-out approach. This has not been done before on the scale contemplated in California. One concern is that some percentage of new enrollees may realize weeks or months after deductions have begun that the program is voluntary, and some will opt out and demand the return of their contributions. With a traditional IRA, this would have significant tax consequences (i.e., early withdrawal penalties). At least until the Secure Choice program is able to assess the volume of such requests, it would be prudent to establish Roth as the default account type.

Electronic Administration of Disclosures and Acknowledgements

It would be helpful if the regulations could expressly permit employers to administer any required notices and related acknowledgments electronically. A significant and growing percentage of the workforce has long become accustomed to receiving and responding to key employment policy information and related forms, notices and enrollments electronically, through secure employee portals. For example, employees may receive their pay statements and annual Forms W-2 and 1095-C (Employer-Provided Health Insurance Offer and Coverage) electronically through such a portal. They often receive employee benefits information and enroll in benefits through the portal. Employees can quickly and securely check their work schedules for the upcoming weeks, hours worked in the current period, and vacation, sick pay and other accruals through their mobile phone.



Electronic administration also facilitates accessibility; e.g., by offering larger font sizes and different languages.

It would be a conspicuous omission if employers were not clearly permitted to convey required disclosures related to the Secure Choice program to employees in similar electronic means, especially for employers that can demonstrate that they routinely provide similar information to employees and administer related acknowledgements and enrollments electronically. All such systems comply with E-SIGN and/or state Uniform Electronic Transactions Acts, which provide that paper formats must be furnished to those recipients that do not demonstrate their ability to receive such records electronically.

The Secure Choice program should take every opportunity to signal a strong preference for electronic administration, which seems critical to achieve program goals within cost constraints. We ask that regulations expressly permit electronic administration of all employer disclosures and acknowledgements.

Clarify Exempt Employer Definition

“Exempt Employer” is defined in the draft rule (p) as “an Employer that either (i) has fewer than five Employees as reported on the DE 9C for the quarter ending September 30 of each Program Year; or (ii) that provides or contributes to a Tax-Favored Retirement Plan; or (iii) is the federal government, the state, any county, any municipal corporation, or any of the state’s units or instrumentalities.”

Since there are three employee counts reported on the DE 9C (one per month, representing the number of workers who work during or received pay for the pay period that includes the 12th of the month), it may not be clear whether an employer meets this definition; for example, if they have fewer than five in one or two months but not all three. We recommend adding “an average of,” as shown below. Alternatively, Secure Choice forms or instructions could offer guidance.

p) “Exempt Employer” means an Employer that either (i) has an average of fewer than five Employees as reported on the DE 9C for the quarter ending September 30 of each Program Year; or (ii) that provides or contributes to a Tax-Favored Retirement Plan; or (iii) is the federal government, the state, any county, any municipal corporation, or any of the state’s units or instrumentalities.

Lastly, thank you for your diligent outreach efforts to seek out relevant stakeholders and ask their advice. We appreciated the opportunity to participate in the informal employer stakeholder working group to discuss program design. Please let us know if we can be of service in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pete Isberg", is positioned above the typed name.

Pete Isberg
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