



## Rewards Policy Insider 2024-14



### In this Issue:

1. [Federal Trade Commission Bans Non-Compete Agreements](#)
2. [IRS Issues FAQs on Educational Assistance Programs](#)
3. [IRS Releases Guidance on SECURE 2.0 Plan Distribution Options](#)

---

## Federal Trade Commission Bans Non-Compete Agreements

Earlier this year, the Federal Trade Commission ("FTC") voted to move forward with finalizing a regulation that

prohibits the vast majority of non-compete clauses in employment agreements. The rule includes a few narrow exceptions, such as for existing agreements involving senior executives, but otherwise represents a broad ban on both new and existing non-compete agreements.

## New Rules Govern Non-Competes

On April 23, 2024, the FTC announced that it was finalizing the rule it proposed in January 2023 to impose a blanket ban on non-compete agreements. Under the [final rule](#), a non-compete agreement means a term or condition of employment that prohibits a worker from, penalizes a worker for, or functions to prevent a worker from seeking or accepting work with a different employer after concluding prior employment or operating a business after concluding prior employment. Non-compete agreements are common in, for example, the financial services, technology, and medical industries.

The Intent of the rule, according to the FTC, is to promote competition, protect the freedom of workers to change jobs, and increase innovation. The ban will become effective on September 4, 2024.

Once effective, the sweeping rule will (1) prohibit employers from entering into new non-compete agreements with most workers, including paid and unpaid employees, independent contractors, and volunteers; and (2) immediately nullify nearly all existing non-compete agreements, regardless of whether they were already in existence prior to the FTC's approval of the final rule.

The final rule also requires employers to notify employees whose non-competes are no longer enforceable because of the new rule. The FTC has published a [model notice](#) employers can use for this purpose.

The rule includes a few important exceptions. Existing non-compete agreements with senior executives – i.e., employees making at least \$151,164 annually and working in a “policy-making” position, such as the President, CEO, or others with authority to make policy decisions for the entire company – can remain in force. However, employers are prohibited from entering into *new* non-compete agreements with senior executives. In addition, certain entities such as banks, loan institutions, common carriers like railroads and airlines, and nonprofits are not subject to the rule. Non-compete agreements that are entered into in connection with the sale of a business are also exempt from the prohibition.

## Ban Faces Legal Challenges

Unsurprisingly, this controversial rule already faces multiple lawsuits in various district courts across the country. In general, the plaintiffs in those lawsuits argue that the FTC does not have the authority to issue the rule. Some legal experts are predicting that one of the lawsuits will delay the rule's effective date or even strike it down entirely. In fact, in an early sign that the rule might be on shaky legal footing, a Texas district court in early July postponed the September 4th effective date with respect to the plaintiffs in the case while their litigation against the FTC proceeds. However, the district court has not issued a nationwide injunction – so the September 4 effective date still applies to everyone except for this group of plaintiffs.

Employers currently using non-compete agreements should start contemplating their plans for complying with the rule but should also watch for developments in these cases that could impact when and if the rule is implemented. The [FTC's website](#) is a good resource for updates on the final rule, including any broadly applicable delays that might be issued by a court or otherwise. We will also report on any relevant developments in future editions of Deloitte's Rewards Policy Insider.

---

## IRS Issues FAQs on Educational Assistance Programs

The IRS on June 17, 2024 issued a series of frequently asked questions ("FAQs") about employer-sponsored educational assistance programs ("EAPs"). Among other things, the FAQs focus on the temporary option to use EAPs to make principal or interest payments on an employee's student loans – which is currently available through the end of 2025.

### Overview of EAPs

Employers can provide employees with up to \$5,250 per calendar year of tax-free educational assistance benefits pursuant to an EAP. Employers that choose to offer an EAP must maintain a separate written plan document that spells out the plan's terms, including eligibility and the specific educational assistance benefits that are available.

As a general rule, EAPs can help employees cover the cost of tuition, fees, and similar expenses, as well as books, supplies and equipment, for undergraduate or graduate level courses. The benefits do not have to be limited to work-related courses. However, they do have to be for the employee's own education, and not for their spouse or dependents.

As discussed in more detail below, under a special temporary rule educational assistance benefits can include principal or interest payments on qualified education loans. However, this option is available only for payments an employer makes pursuant to an EAP after March 27, 2020, and before January 1, 2026.

EAPs generally may not be used to pay for things like meals, lodging, or transportation, or supplies like laptop computers that employees can keep after completing the course.

### Student Loan Repayments

As noted, a temporary rule allows employers to help employees pay their student loans on a tax-free basis through an EAP. Although the general rule for EAPs is that only otherwise eligible expenses an employee incurs during the employment relationship can be educational assistance benefits, it does not matter when the student loan that is being repaid was initially taken out. However, only student loan payments made after March 27, 2020, and before January 1, 2026, are eligible unless Congress acts to extend this temporary rule.

Only the principal and interest on “qualified education loans” can be paid by an EAP. A “qualified education loan” is a loan for education at an “eligible educational institution, which includes any college, university, vocational school or other postsecondary educational institution as determined by the Department of Education. The loan does not have to be issued or guaranteed under a Federal loan program to be a qualified education loan.

As noted, the loan had to be taken by the employee for the employee’s education in order to be a “qualified education loan.” EAPs may not provide benefits to an employee’s spouse or dependents. Thus, an EAP may not pay a student loan taken by an employee’s spouse or dependents, or a student loan taken by an employee to pay for their spouse’s or dependent’s education.

### **Maximum Annual Gross Income Exclusion is \$5,250**

As indicated, the total EAP gross income exclusion for employees is \$5,250 per calendar year. This is an aggregate limit for all educational assistance benefits that is fixed by statute and is not adjusted for inflation, including principal and interest payments on qualified education loans. Employees who do not use the full \$5,250 EAP gross income exclusion in a calendar year may not carry over the surplus to a subsequent year.

---

## **IRS Releases Guidance on SECURE 2.0 Plan Distribution Options**

New guidance from the Internal Revenue Service (“IRS”) provides direction on the provisions in the SECURE 2.0 Act of 2022 (“SECURE 2.0”) that permit distributions from retirement plans and IRAs for emergency personal expenses and for individuals who are victims of domestic abuse.

### **Background**

Section 115 of SECURE 2.0 allows certain retirement plan participants and IRA owners to receive emergency personal expense distributions of up to \$1,000 once per year. Emergency personal expense distributions include, for example, distributions to meet unforeseeable or immediate financial needs relating to personal or family emergency expenses. Such distributions are exempt from the 10% tax that typically applies when a participant or IRA owner takes an early distribution. Emergency personal expense distributions are also exempt from a number of other federal tax rules, such as the 20% withholding rule that typically applies when an individual is making an eligible rollover distribution. The provision also permits the individual to recontribute the distribution within three years if certain requirements are met. It is optional for plans to permit these types of distributions.

Similarly, section 314 of SECURE 2.0 allows distributions of up to \$10,000 from retirement plans and IRAs to victims of domestic abuse. Such distributions are also exempt from the 10% early distribution tax and the 20% withholding rule, and may be repaid within three years. It is optional for plans to permit these types of distributions. Both section 115 and 314 went into effect for

distributions made beginning in 2024, but questions remained about how exactly these provisions would operate.

## IRS Guidance

On June 20, 2024, the IRS released [Notice 2024-55](#), which provides guidance in question and answer form on emergency personal expense distributions and domestic abuse victim distributions. The IRS solicits comments on certain aspects of the Notice, which are due by October 7, 2024.

Guidance in the Notice on emergency personal expense distributions includes:

- ***What distributions qualify.*** Whether an individual meets the standard for having a necessary personal or family emergency expense is determined by the relevant facts and circumstances. Relevant factors include whether the individual (or a family member) has expenses relating to medical care, imminent foreclosure or eviction from a primary residence, or auto repairs, among other factors.
- ***Self-certification.*** Following language in SECURE 2.0 section 115, the guidance confirms that the plan administrator can rely on the employee's own certification that they are eligible for an emergency personal expense distribution.
- ***Plans that do not permit such distributions.*** If a retirement plan does not permit emergency personal expense distributions and an individual takes a distribution that meets the requirements of such a distribution, the guidance provides that the individual may treat the distribution on their federal income tax return as an emergency personal expense distribution.

Guidance in the Notice on domestic abuse victim distributions includes:

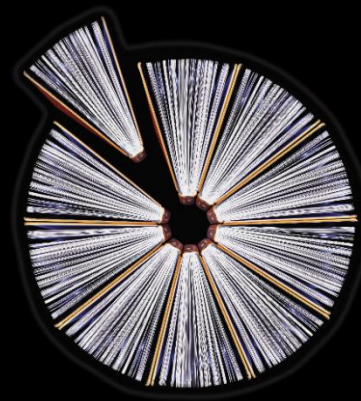
- ***What distributions qualify.*** A domestic abuse victim distribution is a distribution from a retirement plan to a domestic abuse victim made during the one-year period beginning on any date on which the individual is a victim of domestic abuse by a spouse or domestic partner. The guidance defines "domestic abuse" to mean physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim's ability to reason independently, including by means of abuse of the victim's child or another family member living in the household.
- ***Self-certification.*** On the topic of self-certification for domestic abuse victim distributions, the guidance provides that, to meet the certification requirements, the individual could check the box on the distribution request form to certify that (1) they are eligible for such a distribution and (2) the distribution is made during the one-year period beginning on any date on which the individual is a victim of domestic abuse.
- ***Plans that do not permit such distributions.*** The same rules that apply to plans that do not permit emergency personal expense distributions but an individual takes a distribution that qualifies as such (described above) apply to domestic abuse victim distributions.

# Visit the Archive

All previous issues of the Rewards Policy Insider are archived on Deloitte.com and can be accessed [here](#).

Don't forget to bookmark the page for quick and easy reference!

Upcoming editions will continue to be sent via email and will be added to the site on a regular basis.



**Get in touch**

**Subscribe/Unsubscribe**

*This publication contains general information only and Deloitte is not, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional adviser. Deloitte shall not be responsible for any loss sustained by any person who relies on this publication.*

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our global network of member firms and related entities in more than 150 countries and territories (collectively, the “Deloitte organization”) serves four out of five Fortune Global 500® companies. Learn how Deloitte’s approximately 330,000 people make an impact that matters at [www.deloitte.com](http://www.deloitte.com).

None of DTTL, its member firms, related entities, employees or agents shall be responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

© 2024 Deloitte Consulting LLP

To no longer receive emails about this topic please send a return email to the sender with the word “Unsubscribe” in the subject line.