

SECURE 2.0 Act Fact Sheet

The [SECURE 2.0 Act](#) (the “Act”) was enacted on December 29, 2022. It includes over 90 new provisions impacting retirement plans. Plan amendments made pursuant to the Act must be made on or before the last day of the first plan year beginning on or after January 1, 2025 (2027 for governmental plans); however, the plan must be administered in accordance with such amendments as of the effective date of the Act’s requirement or the effective date of the relevant amendment.

The following is an overview of the most relevant provisions of the Act and is not intended to be a detailed summary.

Effective for 2023 (Except as Otherwise Indicated Below)

Modification of Credit for Small Employer Pension Plan Startup Costs

Section 102 of the Act increases the retirement plan startup cost tax credit for small businesses from 50% to 100% for employers with 50 or fewer employees and creates an additional credit (not applicable for defined benefit plans) that is based on the amount contributed by the employer on behalf of employees. **This optional provision is effective for taxable years beginning after December 31, 2022.**

Pooled Employer Plans

Section 105 of the Act clarifies that a pooled employer plan (“PEP”) may designate a named fiduciary (other than an employer in the plan) to be responsible for collecting contributions to the plan. It also requires the named fiduciary to implement written contribution collection procedures that are reasonable, diligent, and systematic. **This optional provision is effective for plan years beginning after December 31, 2022.**

Multiple Employer 403(b) Plans

Section 106 of the Act permits 403(b) plans to participate in multiple employer plans and PEPs. In addition, these plans will get relief from the one bad apple rule meaning violations with respect to one employer will not affect compliant employers. Note, church plans are excluded from this provision. **This optional provision is effective for plan years beginning after December 31, 2022.**

Increased Age for Required Minimum Distributions (“RMDs”)

Section 107 of the Act increases the required beginning date age (“applicable age”) for RMDs. Specifically, for RMDs made after December 31, 2022 to a participant who attains age 72 after that date and before January 1, 2033, the applicable age is 73. For RMDs made after December 31, 2032 to a participant who attains age 73 after that date, the applicable age is 75. Although the IRS will assess excise taxes on late distributions based on these applicable ages, it is our understanding that this change is optional for plans to implement (e.g., a plan could decide to keep age 70.5 as the date on which the plan will commence RMDs).

Small Immediate Financial Incentives for Contributing to a Plan

Section 113 of the Act allows employers to offer *de minimis* financial incentives (such as low-dollar value gift cards), not paid for with plan assets, to encourage employee participation in workplace retirement plans. **This optional provision is effective for plan years beginning after December 29, 2022.**

Application of Code Section 415 Limit for Certain Employees of Rural Electric Cooperatives

Section 415 of the Code generally limits the amount that may be paid by a pension plan in annual benefits to a participant to the lesser of \$265,000 (for 2023) or 100% of the participant's average compensation for their highest 3 years. Section 119 of the Act eliminates the compensation-based limit for participants who are non-highly compensated employees and who participate in a rural electric cooperative retirement plan. **This optional provision is effective for limitation years ending after December 29, 2022.**

Enhancement of 403(b) Plans

Section 128 of the Act allows 403(b) custodial account to participate in group trusts with other tax-preferred savings plans and IRAs. **This optional provision is effective after December 29, 2022.**

Recovery of Retirement Plan Overpayments

Section 301 of the Act gives retirement plan fiduciaries the discretion to decide not to recoup inadvertent benefit overpayments made to retirees. If plan fiduciaries choose to recoup inadvertent overpayments, certain mandatory limitations and protections will apply to safeguard innocent retirees (*e.g.*, no interest may be sought on overpaid amount, restrictions on threatening litigation, etc.). **This provision is effective after December 29, 2022, and, is mandatory with respect to the limitations and protections should fiduciaries decide to recoup an overpayment.**

Reduced Excise Tax for Missed Required Minimum Distributions

Section 302 of the Act reduces the penalty for failure to take required minimum distributions from 50% to 25%. In addition, if the taxpayer timely corrects the failure within the "correction window," the penalty is further reduced to 10%. The correction window generally ends on the last day of the second taxable year that begins after the taxable year in which the RMD should have been made (or on such earlier date of an IRS assessment of the excise tax or mailing of a notice of deficiency). **This provision is automatically effective for taxable years beginning after December 29, 2022.**

Expansion of the Employee Plans Compliance Resolution System ("EPCRS")

Section 305 of the Act expands EPCRS to (i) allow more types of errors to be corrected through self-correction (*e.g.*, certain plan loan failures), (ii) allow self-correction for inadvertent IRA failures, and (iii) exempt certain failures to make required minimum distributions from the otherwise applicable excise tax. **This provision is automatically effective as of December 29, 2022, and the U.S. Treasury Department has until December 29, 2024 to update EPCRS (*i.e.*, Rev. Proc. 2021-30).**

Elimination of "First Day of the Month" Requirement for Governmental 457(b) Plans

Currently, participants in governmental 457(b) plans are required to request changes to their deferral rate prior to the beginning of the month in which the deferral will be made. Section 306 of the Act eliminates this requirement and allows such elections to be made at any time prior to

the date that the compensation being deferred is available. **This optional provision is effective for taxable years beginning after December 29, 2022.**

Distribution to Firefighters

“Qualified public safety employees” in governmental plans who terminate employment after age 50 and take a distribution from a retirement plan are exempt from the 10% tax for early distributions. The exemption currently applies only to public sector firefighters, but not private sector firefighters. Section 308 of the Act expands the exemption to include private sector firefighters. **This optional provision is effective for distributions made after December 29, 2022.**

Repayment of Qualified Birth or Adoption Distribution Limited to 3 Years

Under the 2019 SECURE Act, individuals are allowed to receive distributions from their retirement plan in the case of birth or adoption (“QBAD”) without having to pay the 10% tax for early distributions. The 2019 SECURE Act allowed these distributions to be recontributed at any time which was problematic because the Code does not contain a mechanism for someone to recontribute the QBAD and amend their return to receive a refund of taxes previously paid on the distribution after 3 years. Section 311 of the Act amends the QBAD provision to restrict the recontribution period to 3 years. **If the plan optionally added QBADs, this mandatory provision is effective to distributions made after December 29, 2022 and retroactively to the 3 year period beginning on the day after the date on which such distribution was received.**

Employer May Rely on Employee Certifying that Deemed Hardship Distribution Conditions Are Met

Section 312 of the Act allows employers to rely on an employee’s self-certification that they have had an event that constitutes a hardship for purposes of taking a hardship withdrawal. **This optional provision is effective for plan years beginning after December 29, 2022.**

Eliminating Unnecessary Plan Requirements Related to Unenrolled Participants

Pursuant to Section 320 of the Act, employers are no longer required to provide certain notices to “unenrolled participants” who have not elected to participate in a workplace retirement plan (such as notices regarding different investment options). An “unenrolled participant” is generally defined as an employee who is eligible to participate in an individual account plan but is not participating in such plan, and has received the summary plan description and any other notices related to eligibility under the plan required to be furnished. **This optional provision is effective for plan years beginning after December 31, 2022.**

However, employers are still required to send unenrolled participants (i) an annual notice reminding employees of their eligibility to participate in the plan and any applicable deadlines and (ii) any otherwise required document requested by such employee.

Clarification of Substantially Equal Periodic Payment Rule

Section 323 of the Act expands the existing exception to the 10% tax for early distributions due to substantially equal periodic payments made over the account owner’s life expectancy to apply to rollovers of the account, exchanges of annuities providing the payments, or annuities that satisfy the required minimum distribution rules. **This provision is automatically effective for transfers,**

rollovers, exchanges after December 31, 2023 and for annuity distributions on or after December 29, 2022.

Exception to Penalty for Early Distributions from Qualified Plans for Individuals with a Terminal Illness

Section 326 of the Act provides that distributions made to a terminally ill individual (i.e., expected to result in death within 7 years) are exempt from the 10% tax for early distributions. **This optional provision applies to distributions made after December 29, 2022.**

Repeal of Direct Payment Requirement on Exclusion from Gross Income of Distributions from Governmental Plans for Health and Long-Term Care Insurance

Section 328 of the Act eliminates the requirement that distributions from governmental retirement plans to a public safety officers to pay for health insurance premiums be made directly to the insurer. **This optional provision is effective for distributions made after December 29, 2022.**

Modification of Eligible Age for Exemption from Early Withdrawal Penalty

Qualified public safety employees in governmental plans who terminate employment after age 50 and take a distribution from a retirement plan are exempt from the 10% tax for early distributions. Section 329 of the Act extends the exception to qualified public safety employees with at least 25 years of service with the employer sponsoring the plan. **This optional provision is effective for distributions made after December 29, 2022.**

Exemption from Early Withdrawal Penalty for Certain State and Local Government Corrections Employees

Section 330 of the Act extends the “qualified public safety employee” exception to the 10% tax for early distributions to correction officers who are employees of state and local governments. **This optional provision is effective for distributions made after December 29, 2022.**

Special Rules for Use of Retirement Funds in Connection with Qualified Federally Declared Disaster

Section 331 of the Act allows up to \$22,000 to be distributed from employer retirement plans or IRAs for individuals affected by a federally declared disaster. These “qualified disaster recovery distributions” are not subject to the 10% tax for early distributions and are taken into account as gross income over 3 years. These distributions can be repaid to the qualified plan within a three-year period beginning on the day after the date the distribution was received and will be sourced as a rollover contribution. Employers also may allow for certain qualified distributions to construct or purchase a principal residence in a qualified disaster area, but not used on account of such disaster to be recontributed to the plan and provide for larger loan amounts up to \$100,000 and additional time for repayment of loans for individuals affected by federally declared disasters. **This optional provision is effective for disasters occurring on or after January 26, 2021.**

Recognition of Tribal Government Domestic Relations Order

Section 339 of the Act adds Tribal courts to the list of courts authorized under federal law to issue qualified domestic relations order. **This mandatory provision is effective for domestic relations orders received after December 31, 2022.**

Cash Balance

Section 348 of the Act clarifies that, for purposes of the Code and ERISA, cash balance plans with variable interest crediting rates may use a reasonable projected interest crediting rate, but not in excess of 6%. **This optional provision is effective for plan years beginning after December 29, 2022.**

Elimination of Variable-Rate Premium Indexing

Section 349 of the Act eliminates inflationary indexing of Pension Benefit Guaranty Corporation variable-rate premiums. Variable-rate premiums will be frozen at \$52 per \$1,000 in unfunded vested benefits. **This provision is automatically effective on December 29, 2022.**

Roth Contribution for SIMPLE and SEP Roth IRAs

Section 601 of the Act (i) allows SIMPLE IRAs to accept Roth contributions and (ii) allows employers to offer employees the ability to treat employee and employer contributions made under a simplified employee pension plan (“SEP”) on a Roth basis. **This optional provision is effective for taxable years beginning after December 31, 2022.**

Optional Treatment of Employer Matching or Nonelective Contributions on a Roth Basis

Section 604 of the Act permits defined contribution plans to provide participants with the option of receiving employer matching and non-elective contributions on a Roth basis. Employer contributions designated as Roth contributions must be taxable and nonforfeitable when made. **This optional provision is effective as of December 29, 2022.**

Enhancing Retiree Health Benefits in Pension Plans

The rules that allow an employer to use assets from an overfunded pension plan to pay retiree health and life insurance benefits was set to expire at the end of 2025. Section 606 of the Act extends the expiration date to the end of 2032 and permits transfers to pay retiree health and life insurance benefits provided that the transfer is no more than 1.75% of plan assets and the plan is at least 110% funded. **This optional provision is effective for transfer made on or after December 29, 2022.**

Effective for 2024 (Except as Otherwise Indicated Below)

Indexing IRA Catch-Up Contribution Limits

Section 108 of the Act indexes the IRA catch-up contribution limit for individuals who have attained age 50. **This provision is effective for taxable years beginning after December 31, 2023.**

Qualified Student Loan Repayments Treated as Elective Deferrals for Purposes of Matching Contributions

Section 110 of the Act allows an employer to make matching contributions under a 401(k) plan, 403(b) plan, SIMPLE IRA, or governmental 457(b) plan with respect to “qualified student loan payments.” A “qualified student loan payment” is defined as any indebtedness incurred by the employee solely to pay qualified higher education expenses of the employee. The Act requires employees to annually certify to the employer that such qualified student loan payments were made. The matching contribution with respect to qualified student loan payments must be made at

the same rate and vest in the same manner as matching contributions made on elective deferrals. Plans are permitted to perform separate non-discrimination testing for the employees who receive matching contributions on student loan repayments. **This optional provision is effective for plan years beginning after December 31, 2023.**

Withdrawals for certain Emergency Expenses

Section 115 of the Act provides an exception from the 10% tax for early distributions for certain distributions used for emergency expenses, which are unforeseeable or immediate financial needs relating to personal or family emergency expenses. Only one emergency distribution is allowed per year up to \$1,000. The individual has the option to repay the distribution within 3 years and no additional emergency distributions may be made during the 3-year period until repayment occurs. **This optional provision is effective for taxable years beginning after December 31, 2023.**

Allow Additional Nonelective contributions to SIMPLE Plans

Section 116 of the Act permits an employer to make nonelective contributions to its SIMPLE plan above the minimum contribution required for each employee of the plan. Such contribution must be made in a uniform manner and may not exceed the lesser of up to 10% of compensation or \$5,000 (as indexed). **This optional provision is effective for taxable years beginning after December 31, 2023.**

Contribution Limit for SIMPLE Plans

Section 117 of the Act increases the annual deferral limit and the catch-up contribution limit for SIMPLE IRA plans by 10% for employers with no more than 25 employees. An employer with 26 to 100 employees is permitted to provide the higher deferral limits if the employer either provides a 4% matching contribution or a 3% employer contribution. Section 117 applies similar changes with respect to SIMPLE 401(k) plans. **This optional provision is effective for taxable years beginning after December 31, 2023.**

Exemption for Certain Automatic Portability Transactions

Section 120 of the Act permits retirement plan service providers to provide employer plans with automatic portability services, such as the automatic transfer of a participant's default IRA (established in connection with a distribution from a former employer's plan) into the participant's new employer's retirement plan (unless the participant elects otherwise). **This provision is automatically effective for transactions occurring on or after December 29, 2023.**

Starter 401(k) Plans for Employers with No Retirement Plan

Section 121 of the Act allows an employer that does not sponsor a retirement plan to offer a starter 401(k) plan (or safe harbor 403(b) plan). The plan must generally require all employees to be enrolled in the plan at a 3% to 15% deferral rate. The annual deferral limit for the plan would be the same as the IRA contribution limit with an additional \$1,000 catch-up contribution permitted for individuals who have attained age 50. **This optional provision is effective for plan years beginning after December 31, 2023.**

Emergency Savings Accounts

Section 127 of the Act gives an employer the option to offer its non-highly compensated employees (as defined in the Code) an emergency savings accounts as part of its defined contribution plan. Contributions to these accounts are capped at \$2,500 (or lower amount set by the employer) and must be made on a Roth-basis. Contributions are also treated as elective deferrals for purposes of retirement matching contributions. An eligible participant must be allowed to take a withdrawal at least once per month. In addition, the first 4 withdrawals from the emergency savings account each plan year may not be subject to any fees or charges solely on the basis of the withdrawal. Further, distributions made from an emergency savings account are exempt from the 10% tax for early distributions. **This optional provision is effective for plan years beginning after December 31, 2023.**

Retirement Savings Lost and Found

Section 303 of the Act creates the “Retirement Savings Lost and Found” which is a national database through the U.S. Department of Labor (“DOL”) for retirement plans that will enable individuals who have lost track of their pension plan or 401(k) plan to search for the contact information of their plan’s administrator. Plan administrators will need to begin furnishing information to the DOL for plan years beginning after December 31, 2023. **The DOL, in consultation with the U.S. Treasury Department, has until December 29, 2024 to establish the database.**

Updated Dollar Limit for Mandatory Distributions

Prior to the Act, employers could transfer a former employee’s retirement account from a workplace retirement plan into an IRA if the employee’s balance was between \$1,000 and \$5,000. Section 304 of the Act increases the upper limit from \$5,000 to \$7,000. **This optional provision is effective for distributions made after December 31, 2023.**

Application of Top Heavy Rules to Defined Contribution Plans Covering Excludable Employees

Certain nondiscrimination tests allow employers to test otherwise excludable employees (e.g., those who are under age 21 and have less than year of service) separately. Prior to the Act, separate testing was not permitted for the top-heavy test. Section 310 of the Act now allows an employer to perform the top-heavy test separately on non-excludable and excludable employees. The intent of this provision is to remove the financial incentive for employers to exclude employees from 401(k) plan coverage. **This optional provision is effective for plan years beginning after December 31, 2023.**

Penalty-Free Withdrawal from Retirement Plans for Individual Case of Domestic Abuse

Section 314 of the Act allows retirement plans to permit participants that self-certify that they have experienced domestic abuse to take a distribution equal to the lesser of \$10,000 (as indexed) or 50% of such participant’s account balance. The distribution is not subject to the 10% tax for early distributions and may be repaid to the plan within 3 years. **This optional provision is effective for distributions made after December 31, 2023.**

Reformation of the Family Attribution Rules

Section 315 of the Act updates the stock attribution rules to disregard community property laws for purpose of determining ownership. It also modifies the attribution of stock between parents and minor children. **This provision is automatically effective for plan years beginning after December 31, 2023.**

Extension of the Amendment Period for Amendments to Increase Benefit Accruals Under Plan for Previous Plan Year

Section 316 of the Act allows discretionary amendments to an existing retirement plan that increase participants' benefits to be adopted by the due date of the employer's tax return. **This optional provision is effective for plan years beginning after December 31, 2023.**

Roth Plan Distribution Rules

Section 325 of the Act eliminates the pre-death distribution requirement for Roth accounts in employer plans consistent with the existing rules for Roth IRAs. **This mandatory provision is effective for taxable years beginning after December 31, 2023.**

Surviving Spouse Election to be Treated as Employee

Section 327 of the Act allows a surviving spouse to elect to be treated as the deceased employee for purposes of the required minimum distribution rules. **This mandatory provision is effective for calendar years beginning after December 31, 2023.**

Employers Allowed to Replace SIMPLE Retirement Accounts with Safe Harbor 401(k) Plans Mid-Year

Under prior law, a SIMPLE IRA is generally required to remain in place for the entire plan year. Section 332 of the Act allows an employer to replace its existing SIMPLE IRA plan with a SIMPLE 401(k) plan or other 401(k) plan that requires mandatory employer contributions in the middle of a plan year. **This optional provision is effective for plan years beginning after December 31, 2023.**

Safe Harbor for Correction of Employee Elective Deferral Failures

Section 350 of the Act allows for a grace period to correct reasonable errors in administering automatic enrollment and automatic escalation features. Among other requirements, errors must be corrected within 9½ months after the end of the plan year in which the mistakes were made in order to avoid penalties from applying. This expands the existing safe harbor correction available under EPCRS that was originally set to expire at the end of 2023. **This optional provision is effective for errors after December 3, 2023.**

Hardship Withdrawal Rules for 403(b) Plans

Section 602 of the Act conforms the hardship distribution rules for 403(b) plans with the rules for 401(k) plans. **This optional provision is effective for plan years beginning after December 31, 2023.**

Certain Catch-Up Contributions Treated as Roth Contributions

Section 603 of the Act provides that all catch-up contributions to qualified retirement plans are subject to Roth tax treatment, except for catch-up contributions made by employees with

compensation of \$145,000 or less (as indexed). Other participants (*i.e.*, those with compensation of \$145,000 or less) must be permitted to make Roth catch-up contributions if any participant is required to make catch-up contributions on a Roth basis. **This mandatory provision is effective for taxable years beginning after December 31, 2023.**

Effective for 2025 (Except as Otherwise Indicated Below)

Expanded Automatic Enrollment for Retirement Plans

Section 101 of the Act requires all newly established 401(k) and 403(b) plans to have an automatic enrollment feature. The automatic enrollment amount must be at least 3% but not more than 10%. Each year the amount is increased by 1% until it reaches at least 10% but not more than 15%. The automatic enrollment feature must also allow participants to make a permissible withdrawal within 90 days of the first automatic deferral. Plans adopted on or before December 29, 2022 are exempt from this requirement along with SIMPLE 401(k), governmental plans and church plans. In addition, small businesses with fewer than 11 employees and new businesses (in operation for less than 3 years) are exempt. **This mandatory provision is effective for plan years beginning after December 31, 2024.**

Increased Catch-Up Contribution Limits for Individuals age 60 to 63

Section 109 of the Act increases the catch-up contribution limit for individuals who have attained ages 60, 61, 62 and 63 to the greater of (i) \$10,000 (as indexed) or (ii) 50% over the standard Code Section 414 catch-up contribution limit (as indexed). **This optional provision is effective for taxable years beginning after December 31, 2024.**

Improving Coverage for Part-Time Workers

The 2019 SECURE Act required employers to allow long-term, part-time workers to participate in the employers' 401(k) plan. It required employers maintaining a 401(k) plan to have a dual eligibility requirement under which an employee must complete either 1 year of service or 3 consecutive years of service. Section 125 of the Act reduces the 3 years requirement to 2 years. In addition, this provision extends the long-term, part-time coverage rules to 403(b) plans subject to ERISA. **This mandatory provision is effective for plan years beginning after December 31, 2024.**

Effective for 2026 (Except as Otherwise Indicated Below)

Long-Term Care Contracts Purchased with Retirement Plan Distributions

Section 334 of the Act permits retirement plans to distribute up to \$2,500 (as indexed) per year for the payment of premiums for certain certified long term care insurance contracts. Distributions made pursuant to this Section are exempt from the 10% tax for early distributions. **This optional provision is effective December 29, 2025.**

Requirement to Provide Paper Statements in Certain Cases

Section 338 of the Act provides that, unless a participant elects otherwise, defined contribution plans are required to provide a paper benefit statement at least once annually. The other three required quarterly statements may be provided electronically. For defined benefit plans, unless a participant elects otherwise, the statement that must be provided once every 3 year must be a paper

statement. **This mandatory provision is effective for plan years beginning after December 31, 2025.**

Effective for 2027

Saver's Match

Prior to the Act, certain individuals could receive a nonrefundable tax credit for contributions made to an IRA or an employer retirement plan (the "Saver's Credit"). Section 103 of the Act replaces the Saver's Credit with a matching contribution that must be deposited by the federal government into a taxpayer's IRA or employer retirement plan account. The match is equal to 50% of an individual's IRA or employer retirement plan contributions (up to \$2,000 per individual). The match is phased out depending on an individual's income level and tax filing status. **This optional provision is effective for taxable years beginning after December 31, 2026.**