

Retirement Plans Education Series

SECURE Act 2.0 of 2022

I. HISTORY OF THE LEGISLATION

SECURE Act 2.0 of 2022 (hereinafter referred to as “SECURE 2.0”) is included as Division T of the Consolidated Appropriations Act, 2023 that was passed by Congress December 23, 2022, and signed into law by President Biden on December 29, 2022. SECURE 2.0 has a long history as proposed legislation beginning shortly after the original SECURE Act became effective in 2020. This legislative process has culminated in SECURE 2.0, with strong bi-partisan support for its provisions. This report will examine the provisions of the legislation according to topical categories and, in so doing, will highlight the changes the legislation brings, along with a commentary on how those changes differ from current law.

II. CHANGES IMPACTING 401(K) PLANS

2.1. Section 101. Expanding automatic enrollment

- Current law. Automatic enrollment is not a required feature for 401(k) and 403(b) plans.
- New law. Section 101 adds a new section 414A to the Internal Revenue Code (“IRC”) that requires 401(k) and 403(b) plans to automatically enroll participants in the respective plans upon becoming eligible (and the employees may opt out of coverage). The initial automatic enrollment amount is at least 3 percent but not more than 10 percent. Each year thereafter that amount is increased by 1 percent until it reaches at least 10 percent, but not more than 15 percent. All current 401(k) and 403(b) plans are grandfathered. There is an exception for small businesses with 10 or fewer employees, new businesses (i.e., those that have been in business for less than 3 years), church plans, and governmental plans.
- Effective date. Plan years beginning after December 31, 2024.

2.2. Section 332. Employers allowed to replace SIMPLE retirement accounts with safe harbor 401(k) plans during a year

- Current law. An employer’s ability to replace Simple IRA with a 401(k) plan mid-year is restricted.
- New law. Section 332 amends IRC section 408(p) by adding a new paragraph (11) that allows an employer to replace a SIMPLE IRA plan with a SIMPLE 401(k) plan or other 401(k) plan that requires mandatory employer contributions during a plan year.
- Effective date. Plan years beginning after December 31, 2023.

2.3. Section 350. Safe harbor for corrections of employee elective deferral failures

- Current law. There is no remedy in the IRC for correction of employee elective deferral failures. Any correction must be accomplished through the Internal Revenue Service’s (“IRS”) Employee Plans Compliance System (EPCRS). The latest version of EPCRS is contained in Rev. Proc. 2021-30, which includes a safe harbor that expires December 31, 2023. The safe harbor permits correction if notice is given to the affected employee, correct deferrals commence within certain specified time periods, and the employer provides the employee with any matching contributions that would have been made if the failure had not occurred.
- New law. Section 350 amends IRC section 414 by adding a new subsection (cc) that allows for a grace period to correct, without penalty, reasonable errors in administering these automatic enrollment and automatic escalation features. Errors must be corrected prior to 9 1/2 months after the end of the plan year in which the mistakes were made.
- Effective date. Errors occurring after December 31, 2023.

2.4. Section 603. Elective deferrals generally limited to regular contribution limit

- Current law. IRC section 414(v) deals with catch-up contributions made to IRC section 401(k), 403(b), and governmental 457(b) plans for employees who are age 50 and older, subject to certain limitations.
- New law. IRC section 414(v) is amended by adding a new paragraph (7) thereto, which provides that all catch-up contributions to qualified retirement plans are subject to Roth tax treatment. An exception is provided for employees with compensation of \$145,000 or less (indexed).
- Effective date. Taxable years beginning after December 31, 2023.

2.5. Section 604. Optional treatment of employer matching or nonelective contributions as Roth contributions

- Current law. Roth matching contributions by employers are not permitted.
- New law. Section 604 amends IRC section 402A(a) to allow defined contribution plans to provide participants with the option of receiving matching contributions on a Roth basis.
- Effective date. Date of enactment of SECURE 2.0.

III. CHANGES IMPACTING 403(B) PLANS

3.1. Section 101. Expanding automatic enrollment

- Current law. Automatic enrollment is not a required feature for 401(k) and 403(b) plans.
- New law. Section 101 adds a new section 414A to the Internal Revenue Code ("IRC") that requires 401(k) and 403(b) plans to automatically enroll participants in the respective plans upon becoming eligible (and the employees may opt out of coverage). The initial automatic enrollment amount is at least 3 percent but not more than 10 percent. Each year thereafter that amount is increased by 1 percent until it reaches at least 10 percent, but not more than 15 percent. All current 401(k) and 403(b) plans are grandfathered. There is an exception for small businesses with 10 or fewer employees, new businesses (i.e., those that have been in business for less than 3 years), church plans, and governmental plans.
- Effective date. Plan years beginning after December 31, 2024.

3.2. Section 106. Multiple employer 403(b) plans ("MEPs")

- Current law. IRC section 403(b) plans were not part of the original SECURE Act legislation that authorized pooled employer plans ("PEPs"). Currently, there are no statutory provisions specifically authorizing 403(b) PEPs and MEPs.
- New law. Section 106 amends IRC section 403(b) by adding a new paragraph (15) to allow 403(b) plans, which are generally sponsored by charities, educational institutions, and non-profits, to participate in MEPs and PEPs, including relief from the one bad apple rule so that the violations of one employer do not affect the tax treatment of employees of compliant employers. Thus, 403(b) plans have the same ability to participate in MEPs and PEPs as do plans qualified under IRC subsection 401(a).
- Effective date. Effective for plan years beginning after December 31, 2022.

3.3. Section 128. Enhancement of 403(b) plans

- Current law. Under current law, 403(b) plan investments are generally limited to annuity contracts and publicly traded mutual funds.
- New law. Section 128 amends subparagraph (A) of paragraph 403(b)(7) to permit 403(b) custodial accounts to participate in group trusts (including collective investment trusts) with other tax-preferred savings plans and IRAs.
- Effective date. After date of enactment of SECURE 2.0.

3.4. Section 602. Hardship withdrawal rules for 403(b) plans

- Current law. Currently, there are some differences in the hardship withdrawal rules that pertain to those from 401(k) plans and those from 403(b) plans. For example, hardship distributions from 403(b) plans still cannot include income attributable to elective deferrals and hardship distributions from 403(b) custodial accounts cannot include QNECs (qualified employer nonelective contributions) and QMACs (qualified employer matching contributions). In some cases, only employee contributions (without earnings) are available for hardship distributions.
- New law. Section 602 conforms the 403(b) rules to the 401(k) rules by adding a new paragraph (17) to IRC section 403(b).
- Effective date. Plan years beginning after December 31, 2023.

3.5. Section 604. Optional treatment of employer matching or nonelective contributions as Roth contributions

- Current law. Roth matching contributions by employers are not permitted.
- New law. Section 604 amends IRC section 402A(a) to allow defined contribution plans to provide participants with the option of receiving matching contributions on a Roth basis.
- Effective date. Date of enactment of SECURE 2.0.

IV. CHANGES IMPACTING 457(B) PLANS

4.1. Section 306. Eliminate the “first day of the month” requirement for governmental section 457(b) plans

- Current law. Participants in a governmental 457(b) plan must request changes in their deferral rate prior to the beginning of the month in which the deferral will be made. This rule does not exist for other defined contribution plans.
- New law. Section 306 amends IRC section 457(b)(4) to allow such elections to be made at any time prior to the date that the compensation being deferred is available.
- Effective date. Effective for taxable years beginning after the date of enactment of SECURE 2.0.

4.2. Section 330. Exemption from early withdrawal penalty for certain state and local government corrections employees

- Current law. The 10% additional tax on early distributions from tax preferred retirement savings plans does not apply to a distribution from a governmental plan to a public safety officer who is at least age 50.
- New law. Section 330 amends clause (i) of section 72(t)(10)(B) by striking "or emergency medical services" and inserting "emergency medical services, or services as a corrections officer or as a forensic security employee providing for the care, custody, and control of forensic patients". The effect of this change is to extend the public safety officer exception to the 10 percent early distribution tax to corrections officers who are employees of state and local governments.
- Effective date. Effective for distributions made after the date of enactment of SECURE 2.0.

4.3. Section 604. Optional treatment of employer matching or nonelective contributions as Roth contributions

- Current law. Under current law, plan sponsors are not permitted to provide employer matching contributions in their 401(k), 403(b), and governmental 457(b) plans on a Roth basis. Matching contributions must be on a pre-tax basis only.
- New law. Section 604 amends IRC section 402A to allow defined contribution plans to provide participants with the option of receiving matching contributions on a Roth basis.
- Effective date. Date of enactment of SECURE 2.0.

V. CHANGES IMPACTING IRA-BASED PLANS

5.1. Section 108. Indexing IRA catch-up limit

- Current law. Under current law, the limit on IRA contributions is increased by \$1,000 (not indexed) for individuals who have attained age 50.
- New law. Section 108 indexes such limit by amending subparagraph (C) of IRC section 219(b)(5) to allow for indexing of the \$1,000 amount.
- Effective date. Taxable years beginning after December 31, 2023.

5.2. Section 118. Tax treatment of certain nontrade or business SEP contributions

- Current law. Under IRC section 408(k)(2), participation in a SEP is limited to the employees of the employer.
- New law. Section 118 permits employers of domestic employees (e.g., nannies) to provide retirement benefits for such employees under a Simplified Employee Pension (“SEP”). It accomplishes this by amending subparagraph (B) of IRC section 4972(c)(6) to add a reference to a SEP. IRC section 4972(a) generally imposes a tax equal to 10 percent of the nondeductible contributions under the plan (determined as of the close of the taxable year of the employer). IRC section 4972(c)(6) contains exceptions to the 10% tax on the nondeductible contributions.
- Effective date. Taxable years beginning after the date of the enactment of SECURE 2.0.

5.3. Section 126. Special rules for certain distributions from long-term qualified tuition programs to Roth IRAs

- Current law. No provision.
- New law. Section 126 adds a new subparagraph (E) to IRC section 529(c), dealing with special rollover opportunities to Roth IRAs from long-term qualified tuition programs. Beneficiaries of 529 college savings accounts would be permitted to rollover up to \$35,000 over the course of their lifetime from any 529 account in their name to their Roth IRA. These

rollovers are also subject to Roth IRA annual contribution limits, and the 529 account must have been open for more than 15 years.

- Effective date. With respect to distributions after December 31, 2023.

5.4. Section 307. One-time election for qualified charitable distribution to split-interest entity; increase in qualified charitable distribution limitation

- Current law. IRC section 408(d)(8) describes distributions from IRAs for charitable purposes and states that an amount of a qualified charitable distribution up to \$100,000 shall not be included in the gross income of the taxpayer.
- New law. Section 307 amends IRC section 408(d)(8) by adding at the end the following new subparagraph (F), One-Time Election for Qualified Charitable Distribution to Split-Interest Entity. It allows for a one-time, \$50,000 distribution to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts. Section 307 also indexes for inflation the annual IRA charitable distribution limit of \$100,000.
- Effective date. Distributions made in taxable years beginning after the date of enactment of SECURE 2.0.

5.5. Section 313. Individual retirement plan statute of limitations for excise tax on excess contributions and certain accumulations

- Current law. Filing of IRS Form 5329 starts the running of the statute of limitations for purposes of IRC sec. 4973 [additional 6% tax on excess IRA contributions] and IRC sec. 4974 [additional 50% tax on failure to distribute the minimum required amount]. If affected individuals fail to file Form 5329, it can lead to an indefinite period of limitations that can cause hardship for taxpayers due to the accumulation of interest and penalties.
- New law. Section 313 amends IRC section 6501(1) by adding at the end a new paragraph (4) to provide that a 3-year period of limitations begins when the taxpayer files an individual tax return (Form 1040) for the year of the violation, except in the case of excess contributions, in which case the period of limitations runs 6 years from the date Form 1040 is filed. There is a further exception from this 6-year rule for taxes that arise out of a bargain sale to the IRA.
- Effective date. Date of enactment of SECURE 2.0.

5.6. Section 322. Tax treatment of IRA involved in a prohibited transaction

- Current law. Under IRC sec. 408(e)(2)(A), if an IRA beneficiary engages in a prohibited transaction with respect to the IRA, the IRA loses its tax-favored status and ceases to be an IRA as of the first day of the taxable year in which the prohibited transaction occurs. As a result, the IRA is treated as distributing to the individual on the first day of that taxable year the fair market value of all of the assets in the account.
- New law. Section 322 amends IRC section 408(e)(2)(A) to clarify that if an individual has multiple IRAs, only the IRA with respect to which the prohibited transaction occurred will be disqualified.
- Effective date. Taxable years beginning after the date of enactment of SECURE 2.0.

5.7. Section 601. SIMPLE and SEP Roth IRAs

- Current law. Neither a Simplified Employee Pension (SEP) IRA plan nor a SIMPLE IRA plan allows for Roth contributions.
- New law. Section 601 allows SIMPLE IRAs to accept Roth contributions and it allows employers to offer employees the ability to treat employee (for certain grandfathered SEPs) and employer SEP contributions as Roth (in whole or in part). It accomplishes this by amending the following IRC sections: 408A; 402(h)(1) and (3); 408(k); 408(p); 408A(e); and 408A(d)(2)(B).
- Effective date. Taxable years beginning after December 31, 2022.

VI. CHANGES TO RETIREMENT PLAN CONTRIBUTION LIMITS

6.1. Section 109. Higher catch-up limit to apply at age 60, 61, 62, and 63

- Current law. IRC sec. 414(v)(2)(B) provides a \$5,000 (indexed) age 50 and older catch-up limit for all plans that have salary deferrals other than SIMPLE 401(k) and IRAs, where the indexed limit is \$2,500. The limit on catch-up contributions is \$6,500 for 2022 and \$7,500 for 2023, except in the case of SIMPLE plans for which the limit is \$3,000 for 2022 and \$3,500 for 2023.
- New law. Section 109 amends IRC section 414(v)(2)(B)(i) and (ii), which increases these limits to the greater of \$10,000 (\$5,000 in the case of SIMPLE 401(k) and IRAs) or 50 percent more than the regular catch-up amount in 2025 for individuals who have attained ages 60, 61, 62 and 63. The increased amounts are indexed for inflation after 2025.
- Effective date. Taxable years beginning after December 31, 2024.

6.2. Section 110. Treatment of student loan payments as elective deferrals for purposes of matching contributions

- Current law. There is no authority in the IRC for allowing an employer to make matching contributions based on an employee/participant's repayment of student loan debt. At least one employer, however, has received a private letter that authorizes this practice.
- New law. Section 110 modifies IRC section 401(m)(4)(A) and adds paragraph (D) to section 401(m)(4) so as to permit an employer to make matching contributions under a 401(k) plan, 403(b) plan, or SIMPLE IRA with respect to "qualified student loan payments." A qualified student loan payment is broadly defined as any indebtedness incurred by the employee solely to pay qualified higher education expenses of the employee. Governmental employers are also permitted to make matching contributions in a section 457(b) plan or another plan with respect to such repayments. For purposes of the nondiscrimination test applicable to elective contributions, Section 110 permits a plan to test separately the employees who receive matching contributions on student loan repayments.
- Effective date. Contributions made for plan years beginning after December 31, 2023.

6.3. Section 116. Allow additional nonelective contributions to SIMPLE plans

- Current law. Employers with SIMPLE plans are required to make employer contributions to employees of either 2 percent of compensation or 3 percent of employee elective deferral contributions.
- New law. Section 116 modifies IRC section 408(p)(2)(A) so as to permit an employer to make additional contributions to each employee of the plan in a uniform manner, provided that the contribution may not exceed the lesser of up to 10 percent of compensation or \$5,000 (indexed).
- Effective date. Taxable years beginning after December 31, 2023.

6.4. Section 117. Contribution limit for SIMPLE plans

- Current law. The annual contribution limit for employee elective deferral contributions to a SIMPLE IRA plan is \$14,000 for 2022 (\$15,500 for 2023) and the catch-up contribution limit beginning at age 50 is \$3,000 for 2022 (\$3,500 for 2023). A SIMPLE IRA plan may only be sponsored by a small employer (100 or fewer employees), and the employer is required to either make matching contributions on the first 3 percent of compensation deferred or an employer contribution of 2 percent of compensation (regardless of whether the employee elects to make contributions).
- New law. Section 117 increases the annual deferral limit and the catch-up contribution at age 50 by 10 percent, as compared to the limit that would otherwise apply in the first year this change is effective, in the case of an employer with no more than 25 employees. An employer with 26 to 100 employees would be permitted to provide higher deferral limits, but only if the employer either provides a 4 percent matching contribution or a 3 percent employer contribution. Section 117 makes similar changes to the contribution limits for SIMPLE 401(k) plans. The IRC sections affected by the Section 117 changes are: 408(p)(2)(E); 414(v)(2) for catch-up contributions; and 408(p)(2)(C) for matching contributions.
- Effective date. Taxable years beginning after December 31, 2023.

6.5. Section 317. Retroactive first year elective deferrals for sole proprietors

- Current law. Under the original SECURE Act, an employer may establish a new 401(k) plan after the end of the taxable year, but before the employer's tax filing date and treat the plan as having been established on the last day of the taxable year. Such plans may be funded by employer (but not employee) contributions up to the employer's tax filing date.
- New law. Section 317 allows these plans by means of an amendment to IRC section 401(b)(2), when they are sponsored by sole proprietors or single-member LLCs, to receive employee contributions up to the date of the employee's tax return filing date for the initial year.
- Effective date. Plan years beginning after the date of enactment of SECURE 2.0.

VII. CHANGES TO RETIREMENT PLAN DISTRIBUTION RULES

7.1. Section 107. Increase in age for required beginning date for mandatory distributions

- Current law. Participants are generally required to begin taking distributions from their retirement plans at age 72.
- New law. Section 107 further increases the required minimum distribution age by amending IRC section 401(a)(9)(C)(i)(I) eliminating age 72 and replacing it with the term "applicable age." The applicable age is 73 for someone who attains age 72 after December 31, 2022, and age 73 before January 1, 2033. For someone who attains age 74 after December 31, 2032, the applicable age is 75.
- Effective date. Section 107 is effective as of the dates the applicable age applies to a given individual.

7.2. Section 115. Withdrawals for certain emergency expenses

- Current law. IRC section 72(t) imposes a 10% penalty on early withdrawals before normal retirement age from tax-preferred retirement accounts, such as 401(k) plans and IRAs, unless an exception applies.
- New law. Section 115 amends paragraph (2) of IRC section 72(t) to provide an exception for certain distributions used for emergency expenses, which are unforeseeable or immediate financial needs relating to personal or family emergency expenses. Only one distribution is permissible per year of up to \$1,000, and a taxpayer has the option to repay the distribution within 3 years. No further emergency distributions are permissible during the 3-year repayment period unless repayment occurs.
- Effective date. Distributions made after December 31, 2023.

7.3. Section 120. Exemption for certain automatic portability transactions

- Current law. Under current law, an employer is permitted to distribute a participant's account balance without participant consent if the balance is under \$5,000 and the balance is immediately distributable (e.g., after a termination of employment). Current law requires an employer to roll over this distribution into a default IRA if the account balance is at least \$1,000 and the participant does not affirmatively elect otherwise.
- New law. Section 120 permits a retirement plan service provider to provide employer plans with automatic portability services. Such services involve 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 affirmatively elects otherwise. To implement these changes, Section 120 amends IRC sections 4975(d) and (f) by adding appropriate language.
- Effective date. Transactions occurring on or after the date which is 12 months after the date of enactment of SECURE 2.0.

7.4. Section 201. Remove required minimum distribution barriers of life annuities

- Current law. IRC section 401(a)(9)(A)(ii) requires distributions to begin not later than the required beginning date, in accordance with the regulations. The regulations specify that all annuity payments must be nonincreasing or only increase following certain limited exceptions.
- New law. Section 201 amends IRC section 401(a)(9) by adding subparagraph "(J) CERTAIN INCREASES IN PAYMENTS UNDER A COMMERCIAL ANNUITY." Subparagraph (J) provides that a commercial annuity contract issued in connection with any eligible retirement plan (within the meaning of IRC section 402(c)(8)(B), other than a defined benefit plan) may provide one or more of the following types of payments on or after the annuity starting date: (i) annuity payments that increase by a constant percentage, applied not less frequently than annually, at a rate that is less than 5 percent per year; (ii) a lump sum payment that either results in a shortening of the payment period with respect to an annuity or a full or partial commutation of the future annuity payments, provided that such lump sum is determined using reasonable actuarial methods and assumptions, as determined in good faith by the issuer of the contract, or accelerates the receipt of annuity payments that are scheduled to be received within the ensuing 12 months, regardless of whether such acceleration shortens the payment period with respect to the annuity, reduces the dollar amount of benefits to be paid under the contract, or results in a suspension of annuity payments during the period being accelerated; (iii) an amount which is in the nature of a dividend or similar distribution, provided that the issuer of the contract determines such amount using reasonable actuarial methods and assumptions, as determined in good faith by the issuer of the contract, when calculating the initial annuity payments and the issuer's experience with respect to those factors; or (iv) a final payment upon death that does not exceed the excess of the total amount of the consideration paid for the annuity payments, less the aggregate amount of prior distributions or payments from or under the contract.
- Effective date. Calendar years ending after the date of enactment of SECURE 2.0.

7.5. Section 204. Eliminating a penalty on partial annuitization

- Current law. If a tax-preferred retirement account also holds an annuity, current law requires that the account be bifurcated between the portion of the account holding the annuity and the rest of the account for purposes of applying the required minimum distribution rules. This treatment may result in higher minimum distributions than would have been required if the account did not hold an annuity.
- New law. Section 204 directs the Secretary of the Treasury (or its delegate) to amend the regulations under IRC section 401(a)(9) to provide that if an employee's benefit is in the form of an individual account under a defined contribution plan, the plan may allow the employee to elect to have the amount required to be distributed from such account under such section for a year to be calculated as the excess of the total required amount for such year over the annuity amount for such year. This effectively permits the account owner to elect to aggregate distributions from both portions of the account for purposes of determining minimum distributions.

- Effective date. Date of enactment of SECURE 2.0.

7.6. Section 304. Updating dollar limit for mandatory distributions

- Current law. Under current law, employers may transfer former employees' retirement accounts from a workplace retirement plan into an IRA if their balances are between \$1,000 and \$5,000.
- New law. Section 304 amends both section 203(e)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA") and IRC sections 401(a)(31)(B)(ii) and 411(a)(11)(A) by striking "\$5,000" and inserting "\$7,000".
- Effective date. Distributions made after December 31, 2023.

7.7. Section 308. Distribution to firefighters

- Current law. Under current law, if an employee terminates employment after age 55 and takes a distribution from a retirement plan, the 10 percent early distribution tax under IRC section 72(t) does not apply. However, there is a special rule for "qualified public safety employees" in governmental plans, under which age 50 is substituted for age 55 for purposes of this exception from the 10 percent tax. This exemption applies to public sector firefighters, but not private sector firefighters.
- New law. Section 308 extends the age 50 rule to private sector firefighters, who merit the same treatment for distributions by amending IRC section 72(t)(10).
- Effective date. Distributions made after the date of enactment of SECURE 2.0.

7.8. Section 311. Repayment of qualified birth or adoption distribution limited to 3 years

- Current law. The original SECURE Act included a provision that allows individuals to receive distributions from their retirement plan in the case of birth or adoption without paying the 10 percent additional tax under IRC section 72(t) (known as a qualified birth or adoption distribution, or "QBAD"). The distributions can be recontributed to a retirement plan at any time and are treated as rollovers. The problem with current law is the allowance of recontributions at any time because IRC section 6511 prevents a refund from being provided to a taxpayer after the period of limitations for the return has closed, which is generally a 3-year period. Thus, there would not be a mechanism under the IRC allowing someone who took a birth/adoption distribution to recontribute the distribution more than 3 years later and amend their return to receive a refund for the taxes that were paid in the year of the withdrawal.
- New law. To address this problem, Section 311 amends the QBAD provision [IRC section 72(t)(2)(H)(v)(I)] to restrict the recontribution period to 3 years.
- Effective date. Applies to distributions made after the date of the enactment of SECURE 2.0 and retroactively to the 3-year period beginning on the day after the date on which such distribution was received.

7.9. Section 314. Penalty-free withdrawal from retirement plans for individual case of domestic abuse

- Current law. No provision.
- New law. Section 314 amends IRC allows retirement plans to permit participants that self-certify that they experienced domestic abuse to withdraw a small amount of money (the lesser of \$10,000, indexed for inflation, or 50 percent of the participant's account). A distribution made under Section 314 is not subject to the 10 percent tax on early distributions. Additionally, a participant has the opportunity to repay the withdrawn money from the retirement plan over 3 years and will be refunded for income taxes on money that is repaid.
- Effective date. Effective for distributions made after December 31, 2023.

7.10. Section 323. Clarification of substantially equal periodic payment rule

- Current law. Current law [IRC section 72(t)] imposes a 10 percent additional tax on early distributions from tax-preferred retirement accounts, but an exception applies to substantially equal periodic payments that are made over the account owner's life expectancy.
- New law. Section 323 amends IRC section 72(t)(4) to add a new subparagraph (C) that provides that the exception continues to apply in the case of a rollover of the account, an exchange of an annuity providing the payments, or an annuity that satisfies the required minimum distribution rules.
- Effective date. Transfers, rollovers, exchanges after December 31, 2023, and for annuity distributions on or after the date of enactment of SECURE 2.0.

7.11. Section 325. Roth plan distribution rules

- Current law. Under current law, required minimum distributions are not required to begin prior to the death of the owner of a Roth IRA. However, pre-death distributions are required in the case of the owner of a Roth designated account in an employer retirement plan (e.g., 401(k) plan).

- New law. Section 325 adds paragraph (5) to IRC section 402A that eliminates the pre-death distribution requirement for Roth accounts in employer plans.
- Effective date. Taxable years beginning after December 31, 2023 but does not apply to distributions which are required with respect to years beginning before January 1, 2024, but are permitted to be paid on or after such date.

7.12. Section 327, Surviving spouse election to be treated as employee

- Current law. No provision.
- New law. Section 327 amends IRC 401(a)(9)(B)(iv) to allow a surviving spouse to elect to be treated as the deceased employee for purposes of the required minimum distribution rules.
- Effective date. Effective for calendar years beginning after December 31, 2023.

7.13. Section 334. Long-term care contracts purchased with retirement plan distributions

- Current law. No provision.
- New law. Section 334 adds paragraph (39) [Qualified Long-Term Care Distributions] to IRC section 401(a). It permits retirement plans to distribute up to \$2,500 per year for the payment of premiums for certain specified long-term care insurance contracts. Distributions from plans to pay such premiums are exempt from the additional 10 percent tax on early distributions. Only a policy that provides for high quality coverage is eligible for early distribution and waiver of the 10 percent tax.
- Effective date. 3 years after date of enactment of SECURE 2.0.

7.14. Section 337. Modification of required minimum distribution rules for special needs trust

- Current law. No provision.
- New law. Section 337 amends IRC section 401(a)(9)(H)(iv)(II) to clarify that, in the case of a special needs trust established for a beneficiary with a disability, the trust may provide for a charitable organization as the remainder beneficiary.
- Effective date. Calendar years beginning after the date of enactment of SECURE 2.0.

VIII. OTHER RETIREMENT PLAN CHANGES AND OPPORTUNITIES

8.1. Section 105. Pooled employer plan modification

- Current law. No provision.
- New law. Section 105 amends ERISA section 3(43)(B)(ii) to clarify that a pooled employer plan (“PEP”) may designate a named fiduciary (other than an employer in the plan) to collect contributions to the plan. Such fiduciary would be required to implement written contribution collection procedures that are reasonable, diligent, and systematic.
- Effective date. Effective for plan years beginning after December 31, 2022.

8.2. Section 121. Starter 401(k) plans for employers with no retirement plan

- Current law. No provision.
- New law. Section 121 permits an employer that does not sponsor a retirement plan to offer a starter 401(k) plan (or safe harbor 403(b) plan). It accomplishes this by adding a new paragraph (16) to IRC section 401(k) entitled “STARTER 401(k) DEFERRAL-ONLY PLANS FOR EMPLOYERS WITH NO RETIREMENT PLAN.” In the case of 403(b) plans, a new paragraph (16) is added to IRC section 403(b) entitled “SAFE HARBOR DEFERRAL-ONLY PLANS FOR EMPLOYERS WITH NO RETIREMENT PLAN.” A starter 401(k) plan (or safe harbor 403(b) plan) would generally require that all employees be default enrolled in the plan at a 3 to 15 percent of compensation deferral rate. The limit on annual deferrals would be the same as the IRA contribution limit, which for 2022 is \$6,000 with an additional \$1,000 in catch-up contributions beginning at age 50. Cost of living adjustments apply after 2024. There is no employer matching or nonelective contribution possibility.
- Effective date. Plan years beginning after December 31, 2023.

8.3. Section 123. Certain securities treated as publicly-traded in case of employee stock ownership plans (“ESOPs”)

- Current law. IRC section 401(a)(35)(F) provides rules for determining when ESOPs are considered as holding publicly-traded securities.
- New law. Section 123 updates those rules by adding subparagraph (I) to IRC section 401(a)(35). Subparagraph (I) allows certain non-exchange traded securities to qualify as “publicly traded employer securities” so long as the security is subject to priced quotations by at least four dealers on a Securities and Exchange Commission-regulated interdealer quotation system, is not a penny stock and is not issued by a shell company, and has a public float of at least 10

percent of outstanding shares. For securities issued by domestic corporations, the issuer must publish annual audited financial statements. Securities issued by foreign corporations are subject to additional depository and reporting requirements. The updated definitions in Section 123 will allow highly regulated companies with liquid securities that are quoted on non-exchange markets to treat their stock as “public” for ESOP purposes, thus making it easier for these companies to offer ESOPs to their U.S. employees.

- Effective date. Plan years beginning after December 31, 2027.

8.4. Section 127. Emergency savings accounts linked to individual account plans

- Current law. No provision.
- New law. Section 127 amends ERISA section (3) [Definitions] to add a paragraph (45) PENSION-LINKED EMERGENCY SAVINGS ACCOUNT. It further adds a new Part 8 to ERISA Title I, with sections 801 - 804. The new provisions provide employers the option to offer to their non-highly compensated employees’ pension-linked emergency savings accounts. Employers may automatically opt employees into these accounts at no more than 3 percent of their salary, and the portion of an account attributable to the employee’s contribution is capped at \$2,500 (or lower as set by the employer). Once the cap is reached, the additional contributions can be directed to the employee’s Roth defined contribution plan (if they have one) or stopped until the balance attributable to contributions falls below the cap. Contributions are made on a Roth-like basis and are treated as elective deferrals for purposes of retirement matching contributions with an annual matching cap set at the maximum account balance – i.e., \$2,500 or lower as set by the plan sponsor. The first four withdrawals from the account each plan year may not be subject to any fees or charges solely on the basis of such withdrawals. At separation from service, employees may take their emergency savings accounts as cash or roll it into their Roth defined contribution plan (if they have one) or IRA.
- Effective date. Plan years beginning after December 31, 2023.

8.5. Section 348. Cash balance

- Current law. Cash balance plans are a form of a defined benefit plan that have certain rules pertaining to the interest crediting rate.
- New law. Section 348 adds a new paragraph (6) to IRC section 411(b) and a new paragraph (6) to ERISA section 204(b), both dealing with the projected interest crediting rate applicable to cash balance plans. The changes made by Section 348 clarify the application of the IRC and ERISA rules that prohibit the backloading of benefit accruals, as they relate to hybrid plans (a cash balance is a hybrid plan for this purpose) that credit variable interest. For purposes of the applicable rules, the interest crediting rate that is treated as in effect and as the projected interest crediting rate is a reasonable projection of such variable interest rate, subject to a maximum of 6 percent. This clarification will allow plan sponsors to provide larger pay credits for older, longer service workers.
- Effective date. Effective on the date of enactment of SECURE 2.0.

8.6. Section 349. Termination of variable rate premium indexing

- Current law. Defined benefit plans must pay an insurance premium to the Pension Benefit Guaranty Corporation (“PBGC”).
- New law. Section 349 amends ERISA section 4006(a)(8) to remove the “applicable dollar amount” language in the rules for determining the premium fund target for purposes of unfunded vested benefits and replaces it with a flat \$52 for each \$1,000 of unfunded vested benefits.
- Effective date. Effective on the date of enactment of SECURE 2.0.

8.7. Section 606. Enhancing retiree health benefits in pension plans

- Current law. Under current law, an employer may use assets from an overfunded pension plan to pay retiree health and life insurance benefits. These rules sunset at the end of 2025.
- New law. Section 606 amends paragraph (4) of IRC section 420(b) and, thus, extends the sunset date to the end of 2032 and would permit transfers to pay retiree health and life insurance benefits provided the transfer is no more than 1.75 percent of plan assets and the plan is at least 110 percent funded.
- Effective date. Transfers made on or after the date of enactment of SECURE 2.0.

IX. PARTICIPANT BENEFITS AND TAXATION PROVISIONS

9.1. Section 103. Saver’s Match

- Current law. Current law provides for a nonrefundable credit for certain individuals who make contributions to individual retirement accounts (“IRAs”), employer retirement plans (such as 401(k) plans), and ABLE accounts. IRC section 529A(b)(1) defines the term “qualified ABLE program” means a program established and maintained by a State, or

agency or instrumentality thereof—(A) under which a person may make contributions for a taxable year, for the benefit of an individual who is an eligible individual for such taxable year, to an ABLE account which is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account, (B) which limits a designated beneficiary to 1 ABLE account for purposes of this section, and (C) which meets the other requirements of this section.

- New law. Section 103 adds new IRC section 6433 and, in the process, repeals and replaces the credit with respect to IRA and retirement plan contributions, changing it from a credit paid in cash as part of a tax refund into a federal matching contribution that must be deposited into a taxpayer's IRA or retirement plan. The match is 50 percent of IRA or retirement plan contributions up to \$2,000 per individual. The match phases out between \$41,000 and \$71,000 in the case of taxpayers filing a joint return (\$20,500 to \$35,500 for single taxpayers and married filing separate; \$30,750 to \$53,250 for head of household filers).
- Effective date. Taxable years beginning after December 31, 2026.

9.2. Section 113. Small immediate financial incentives for contributing to a plan

- Current law. Under current law, employers may provide matching contributions as a long-term incentive for employees to contribute to a 401(k) plan. However, immediate financial incentives (like gift cards in small amounts) are prohibited even though individuals may be especially motivated by them to join their employers' retirement plans.
- New law. Section 113 enables employers to offer de minimis financial incentives, not paid for with plan assets, such as low-dollar gift cards, to boost employee participation in workplace retirement plans by exempting de minimis financial incentives from section 401(k)(4)(A) and from the corresponding rule under section 403(b)(12)(A).
- Effective date. Plan years beginning after the date of enactment of SECURE 2.0.

9.3. Section 114. Deferral of tax for certain sales of employer stock to employee stock ownership plan sponsored by S corporation

- Current law. Under IRC section 1042, an individual owner of stock in a non-publicly traded C corporation that sponsors an employee stock ownership plan ("ESOP") may elect to defer the recognition of gain from the sale of such stock to the ESOP if the seller reinvests the sales proceeds into qualified replacement property, such as stock or other securities issued by a U.S. operating corporation. After the sale, the ESOP must own at least 30 percent of the employer corporation's stock.
- New law. Section 114 expands the gain deferral provisions of Code section 1042 with a 10 percent limit on the deferral to sales of employer stock to S corporation ESOPs. IRC section 1042(c)(1)(A) is amended and a new IRC section 1042(h) is added.
- Effective date. Sales made after December 31, 2027.

9.4. Section 302. Reduction in excise tax on certain accumulations in qualified retirement plans

- Current law. IRC section 4974(a) provides for a 50 percent excise tax for failures to take minimum required distributions from a qualified retirement plan, defined for this purpose as one qualified under the following sections of the IRC: 401(a); 403(a); 403(b); 408(a); and 408(b).
- New law. Section 302 reduces the penalty under IRC section 4974 for failure to take required minimum distributions from 50 to 25 percent. New subsection (e) of IRC section 4974 provides that in the case of a taxpayer who—(A) receives a distribution, during the correction window, of the amount which resulted in imposition of a tax under IRC section 4974(a) from the same plan to which such tax relates, and (B) submits a return, during the correction window, reflecting such tax (as modified by this subsection), the first sentence of IRC section 4974(a) shall be applied by substituting "10 percent" for "25 percent." For purposes of this subsection, the term "correction window" means the period of time beginning on the date on which the tax under IRC section 4974(a) is imposed with respect to a shortfall of distributions from a plan described in IRC section 4974 (a), and ending on the earliest of: (A) the date of mailing a notice of deficiency with respect to the tax imposed by IRC section 4974(a) under IRC section 6212, (B) the date on which the tax imposed by IRC section 4974(a) is assessed, or (C) the last day of the second taxable year that begins after the end of the taxable year in which the tax under IRC section 4974(a) is imposed.
- Effective date. Taxable years beginning after the date of enactment of SECURE 2.0.

9.5. Section 309. Exclusion of certain disability-related first responder treatment payments

- Current law. No provision.
- New law. Section 309 adds new IRC section 139C that permits first responders to exclude service-connected disability pension payments from gross income after reaching retirement age.
- Effective date. Amounts received in taxable years beginning after December 31, 2026.

9.6. Section 326. Exception to penalty on early distributions from qualified plans for individuals with a terminal illness

- Current law. Under current law, IRC section 72(t) adds an additional 10 percent tax to early distributions from tax-preferred retirement accounts, subject to certain exceptions.
- New law. Section 326 provides an exception to the tax in the case of a distribution to a terminally ill individual by means of a new subparagraph (L) to IRC section 72(t)(2).
- Effective date. Distributions made after the date of enactment of SECURE 2.0.

9.7. Section 329. Modification of eligible age for exemption from early withdrawal penalty

- Current law. The 10 percent additional tax on early distributions from tax preferred retirement savings plans does not apply to a distribution from a governmental plan to a public safety officer who is at least age 50. See IRC section 72(t)(10)(A).
- New law. Section 329 amends IRC section 72(t)(10) by making the requirement age 50 or 25 years of service under the plan, whichever is earlier.
- Effective date. Distributions made after the date of enactment of SECURE 2.0.

9.8. Section 333. Elimination of additional tax on corrective distributions of excess contributions

- Current law. Current law requires a distribution if too much is contributed to an IRA. The corrective distribution includes the excessive contribution and any earnings allocable to that contribution.
- New law. Section 333 exempts the excess contribution and earnings allocable to the excess contribution from the 10 percent additional tax on early distributions by amending IRC section 72(t)(2)(A).
- Effective date. Any determination of, or affecting, liability for taxes, interest, or penalties which is made on or after the date of enactment of SECURE 2.0, without regard to whether the act (or failure to act) upon which the determination is based occurred before such date of enactment.

X. INVESTMENT-RELATED PROVISIONS

10.1. Section 202. Qualifying longevity annuity contracts

- Current law. In 2014, the Treasury Department published final regulations on qualifying longevity annuity contracts ("QLACs"). QLACs are generally deferred annuities that begin payment at the end of an individual's life expectancy. Q&A-17(b)(3) of Treas. Reg. section 1.401(a)(9)-6 and Q&A-12(b)(3) of Treas. Reg. section 1.408-8 contain a limit that premiums for qualifying longevity annuity contracts be limited to 25 percent of an individual's account balance.
- New law. Section 202 addresses these limitations by repealing the 25 percent limit and allowing up to \$200,000 (indexed) to be used from an account balance to purchase a QLAC. Section 202 also facilitates the sale of QLACs with spousal survival rights and clarifies that free-look periods are permitted up to 90 days with respect to contracts purchased or received in an exchange on or after July 2, 2014.
- Effective date. Contracts purchased or received in an exchange on the date of enactment of this Act, and the Treasury Secretary must update the relevant regulations within 18 months of the date of enactment of SECURE 2.0.

10.2. Section 203. Insurance-dedicated exchange-traded funds

- Current law. Exchange-traded funds ("ETFs") are pooled investment vehicles that are traded on stock exchanges. They are similar to mutual funds, except the shares can be traded throughout the day on the stock market, rather than having to be held until after the market closes. ETFs are widely available through retirement plans, IRAs, and taxable investment accounts. However, outdated Treasury Department regulations have prevented ETFs from being widely available through individual variable annuities. Simply because the regulations were written before ETFs existed, ETFs cannot satisfy the regulatory requirements to be "insurance-dedicated."
- New law. Section 203 directs the Treasury Department to update the regulations to reflect the ETF structure to provide that ownership of an ETF's shares by certain types of institutions that are necessary to the ETF's structure would not preclude look-through treatment for the ETF, as long as it otherwise satisfies the current-law requirements for look-through treatment. This essentially would facilitate the creation of a new type of ETF that is "insurance-dedicated."
- Effective date. Applies to segregated asset account investments made on or after the date which is 7 years after the date of the enactment of SECURE 2.0.

10.3. Section 318. Performance benchmarks for asset allocation funds

- Current law. The DOL's participant disclosure regulation for individual account plans in which the participant directs the investment of assets allocated to his or her account [see 29 CFR 2550.404a-5] requires that each designated investment alternative's historical performance be compared to an appropriate broad-based securities market index.

However, the rule does not adequately address increasingly popular investments like target date funds that include a mix of asset classes.

- New law. Section 318 directs the Labor Secretary to update the DOL's regulations so that an investment that uses a mix of asset classes can be benchmarked against a blend of broad-based securities market indices, provided (a) the index blend reasonably matches the fund's asset allocation over time, (b) the index blend is reset at least once a year, and (c) the underlying indices are appropriate for the investment's component asset classes and otherwise meet the rule's conditions for index benchmarks. This change in the disclosure rule allows better comparisons and aids participant decision-making.
- Effective date. The DOL is to update its regulations no later than two years after enactment of SECURE 2.0.

XI. EMPLOYER TAX CREDITS AND DEDUCTIONS

11.1. Section 102. Modification of credit for small employer pension plan startup costs

- Current law. The tax credit for small employer pension startup costs is found in IRC section 45E. The 3-year small business startup credit is currently 50 percent of administrative costs, up to an annual cap of \$5,000.
- New law. Section 102 makes changes to the credit by increasing the startup credit from 50 percent to 100 percent for employers with up to 50 employees. Except in the case of defined benefit plans, an additional credit is provided. The amount of the additional credit generally will be a percentage of the amount contributed by the employer on behalf of employees, up to a per-employee cap of \$1,000. This full additional credit is limited to employers with 50 or fewer employees and phased out for employers with between 51 and 100 employees. The applicable percentage is 100 percent in the first and second years, 75 percent in the third year, 50 percent in the fourth year, 25 percent in the fifth year – and no credit for tax years thereafter.
- Effective date. Taxable years beginning after December 31, 2022.

11.2. Section 111. Application of credit for small employer pension plan startup costs to employers which join an existing plan

- Current law. Under IRC section 45E, with respect to both pre-and post-SECURE (original) Act law, the startup tax credit only applies for the first 3 years that a plan is in existence. The problem comes for an employer that is seeking to join a multiple employer plan ("MEP"). For example, if a small business joins a MEP that has already been in existence for 3 years, the startup credit is not available. If, for example, the MEP has been existence for 1 or 2 years when a small business joins, the small business may be able to claim the credit for 1 or 2 years, respectively.
- New law. Section 111 fixes the problem of an employer joining a MEP potentially not being able to fully utilize the credit for startup costs by making it so that employers joining a MEP (which includes PEPs) are eligible for the credit for all 3 years.
- Effective date. Effective retroactively for taxable years beginning after December 31, 2019.

XII. CHANGES AFFECTING PLAN SPONSORSHIP AND ADMINISTRATION

12.1. Section 112. Military spouse retirement plan eligibility credit for small employers

- Current law. No provision.
- New law. Section 112 provides small employers a tax credit with respect to their defined contribution plans if they (1) make military spouses immediately eligible for plan participation within two months of hire, (2) upon plan eligibility, make the military spouse eligible for any matching or nonelective contribution that they would have been eligible for otherwise at 2 years of service, and (3) make the military spouse 100 percent immediately vested in all employer contributions. The tax credit [new IRC section 45AA] equals the sum of (1) \$200 per military spouse, and (2) 100 percent of all employer contributions (up to \$300) made on behalf of the military spouse, for a maximum tax credit of \$500. This credit applies for 3 years with respect to each military spouse – and does not apply to highly compensated employees. An employer may rely on an employee's certification that such employee's spouse is a member of the uniformed services.
- Effective date. Taxable years beginning after the date of enactment of SECURE 2.0.

12.2. Section 125. Improving coverage for part-time workers

- Current law. The original SECURE Act requires employers to allow long-term, part-time workers to participate in the employers' 401(k) plans. The SECURE Act provision provides that – except in the case of collectively bargained plans – employers maintaining a 401(k) plan must have a dual eligibility requirement under which an employee must complete either 1 year of service (with the 1,000-hour rule) or 3 consecutive years of service (where the employee completes at least 500 hours of service).
- New law. Section 125 reduces the 3-year rule to 2 years, effective for plan years beginning after December 31, 2024. Section 125 also provides that pre-2021 service is disregarded for vesting purposes, just as such service is

disregarded for eligibility purposes under current law, effective as if included in the SECURE Act to which the amendment relates. In addition to 401(k) plans, this provision also extends the long-term part-time coverage rules to 403(b) plans that are subject to ERISA. Affected statutes include: (i) ERISA section 202(c); (ii) IRC section 401(k)(15)(B)(i); and (iii) ERISA section 203(b)(4).

- Effective date. Plan years beginning after December 31, 2024.

12.3. Section 301. Recovery of retirement plan overpayments

- Current law. If plan participants have received more benefit payments than those to which they are entitled, ERISA requires plan fiduciaries to pursue repayment of those benefits from the affected participants because the amount of overpayments constitute plan assets.
- New law. Section 301 allows retirement plan fiduciaries the latitude to decide not to recoup overpayments that were mistakenly made to retirees. It amends ERISA section 206 by adding a new subsection (h) thereto. If plan fiduciaries choose to recoup overpayments, limitations and protections apply to safeguard innocent retirees. This protects both the benefits of future retirees and the benefits of current retirees. Rollovers of the overpayments also remain valid.
- Effective date. Date of enactment of SECURE 2.0.

12.4. Section 310. Application of top-heavy rules to defined contribution plans covering excludable employees

- Current law. Under current law, qualified retirement plans must pass the top-heavy test, in addition to other nondiscrimination tests. Plans that are deemed top-heavy are required to provide employees with a minimum of a 3 percent of pay nonelective contribution, which is a significant cost to small businesses. Other nondiscrimination tests that apply to 401(k) plans allow an employer to test otherwise excludable employees (e.g., those who are under age 21 and have less than 1 year of service) separately. This was intended to encourage plan sponsors to permit employees to defer earlier than the minimum age and service conditions permitted under the law because it reduces the situations where plans would fail the nondiscrimination tests if these employees were included when performing the test. However, this separate testing is not allowed for the top-heavy test. Small business retirement plans often do not cover excludable employees because, if the plan is or becomes top heavy, the employer may be required to contribute a top-heavy employer contribution for all employees who are eligible to participate in the plan, straining the budget for these small businesses.
- New law. Section 310 amends IRC section 416 by adding a new subparagraph (C) to IRC section 416(c)(2). That allows an employer to perform the top-heavy test separately on the non-excludable and excludable employees and removes the financial incentive to exclude employees from the 401(k) plan and increase retirement plan coverage to more workers.
- Effective date. Plan years beginning after December 31, 2023.

12.5. Section 312. Employer may rely on employee certifying that deemed hardship distribution conditions are met

- Current law. No provision.
- New law. Section 312 provides that, under certain circumstances, employees are permitted to self-certify that they have had an event that constitutes a hardship for purposes of taking a hardship withdrawal. It does this by adding a new subparagraph (C) [Employee Self-Certification] to IRC section 401(k)(14). This is a logical step in light of the success of the coronavirus-related distribution self-certification rules and the current hardship regulations that already permit employees to self-certify that they do not have other funds available to address a hardship.
- Effective date. Plan years beginning after the date of enactment of SECURE 2.0.

12.6. Section 315. Reform of family attribution rule

- Current law. Under IRC section 414, certain related businesses must be aggregated when performing the coverage and nondiscrimination tests. The aggregation rules are generally based on the degree of common ownership of the businesses. In determining the level of ownership in a business, the tax laws have certain attribution rules whereby an individual is deemed to own stock held by other individuals or entities.
- New law. Section 315 adds new paragraphs (2) and (3) to IRC section 414(b) for the purpose of updating two stock attribution rules. The first update addresses inequities where spouses with separate businesses reside in a community property state when compared to spouses who reside in separate property states. The second update modifies the attribution of stock between parents and minor children.
- Effective date. Plan years beginning after December 31, 2023.

12.7. Section 316. Amendments to increase benefit accruals under plan for previous plan year allowed until employer tax return due date

- Current law. IRC section 401(b)(2) permits an employer to adopt a new retirement plan by the due date of the employer's tax return for the fiscal year in which the plan is effective. Current law, however, provides that plan amendments to an existing plan must generally be adopted by the last day of the plan year in which the amendment is effective. This precludes an employer from adding plan provisions that may be beneficial to participants.
- New law. Section 316 amends these provisions by adding paragraph (3) to IRC section 401(b) to allow discretionary amendments that increase participants' benefits to be adopted by the due date of the employer's tax return.
- Effective date. Plan years beginning after December 31, 2023.

12.8. Section 320. Eliminating unnecessary plan requirements related to unenrolled participants

- Current law. Under current law, employees eligible to participate in a retirement plan are required to receive a broad array of notices that are intended to inform them of their various options and rights under the plan. In the case of eligible employees who have not elected to participate in the plan ("unenrolled participants"), these notices – such as notices regarding the different investment options available under the plan – are generally unnecessary, and can even have adverse effects on savings and coverage.
- New law. Section 320 adds a redesignated ERISA section 111 that no longer requires employers provide certain intermittent ERISA or IRC notices to unenrolled participants who have not elected to participate in a workplace retirement plan. However, to further encourage participation of unenrolled participants, the plan is required to send (1) an annual reminder notice of the participant's eligibility to participate in the plan and any applicable election deadlines, and (2) any otherwise required document requested at any time by the participant. This rule applies only with respect to an unenrolled participant who received the summary plan description, in connection with initial eligibility under the plan, and any other notices related to eligibility under the plan required to be furnished.
- Effective date. Plan years beginning after December 31, 2022.

12.9. Section 335. Corrections of mortality tables

- Current law. No provision.
- New law. Section 335 generally requires that for purposes of the minimum funding rules, a pension plan is not required to assume beyond the plan's valuation date future mortality improvements at any age greater than 0.78 percent. It dictates that the Treasury Secretary shall amend the relevant regulation on the matter within 18 months.
- Effective date. Section 335 shall be deemed to take effect on the date of enactment of SECURE 2.0.

12.10. Section 338. Requirement to provide paper statements in certain cases

- Current law. ERISA section 105 describes the requirements for reporting of participant's benefit rights. A pension benefit statement must be furnished quarterly to each participant who has the right to direct the investment of assets allocated to his or her account and yearly for all other defined contribution retirement plans. A pension benefit statement must be furnished at least once every 3 years in the case of a defined benefit plan to a participant who has a nonforfeitable accrued benefit. The pension benefit statement may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant or beneficiary.
- New law. Section 338 amends ERISA section 105 to generally provide that, with respect to defined contribution plans, unless a participant elects otherwise, the plan is required to provide a paper benefit statement at least once annually. The other three quarterly statements required under ERISA are not subject to this rule (i.e., they can be provided electronically). For defined benefit plans, unless a participant elects otherwise, the statement that must be provided once every 3 years under ERISA must be a paper statement.
- Effective date. The Labor Secretary must update the relevant sections of their regulations and corresponding guidance by December 31, 2024, and the annual paper statement is effective for plan years beginning after December 31, 2025.

12.11. Section 339. Recognition of tribal government domestic relations orders

- Current law. IRC section 414(p) and ERISA section 206(d) provide for domestic relations orders and the distributions to alternate payees.
- New law. Section 339 amends the IRC and ERISA to add Tribal courts to the list of courts authorized under federal law to issue qualified domestic relations orders.
- Effective date. Applies to domestic relations orders received by plan administrators after December 31, 2022, including any such order which is submitted for reconsideration after such date.

12.12. Section 340. Defined contribution plan fee disclosure improvements

- Current law. No provision.

- New law. Section 340 builds on recommendations recently made to the DOL by the Government Accountability Office and requires the agency to review its fiduciary disclosure requirements in participant-directed individual account plan regulations.
- Effective date. A report must be submitted to Congress within 3 years on such findings, including recommendations for legislative changes.

12.13. Section 341. Consolidation of defined contribution plan notices

- Current law. Current law requires certain retirement plan notices to be provided to participants as individual notices.
- New law and effective date. Section 341 directs the Treasury and DOL Secretaries within 2 years to amend regulations to permit a plan to consolidate certain required plan notices.

12.14. Section 343. Defined benefit annual funding notices

- Current law. ERISA section 101(f) provides that defined benefit annual funding notices be provided to the PBGC, to each participant and beneficiary, and to each labor organization representing such participants or beneficiaries, and, in the case of a multiemployer plan, to each employer that has an obligation to contribute to the plan.
- New law. Section 343 aims to identify defined benefit pension plan funding issues more clearly on a plan's annual funding notice.
- Effective date. Plan years beginning after December 31, 2023.

12.15. Section 345. Annual audits for group of plans

- Current law. Under current law, generally, a Form 5500 for a defined contribution plan must contain an opinion from an independent qualified public accountant as to whether the plan's financial statements and schedules are fairly presented. However, no such opinion is required with respect to a plan covering fewer than 100 participants.
- New law. Section 345 clarifies that plans filing under a Group of Plans need only to submit an audit opinion if they have 100 participants or more. In other words, DOL and Treasury would continue to receive full audit information on at least the number of plans as under current law.
- Effective date. Date of enactment of SECURE 2.0.

12.16. Section 401. Amendments relating to Setting Every Community Up for Retirement Enhancement Act of 2019

- Current law. Original SECURE Act.
- New law. Section 401 includes three technical and five clerical amendments to the SECURE Act.
- Effective date. These amendments are effective as if included in the section of the SECURE Act to which the amendment relates.

12.17. Section 501. Provisions relating to plan amendments

- Section 501 allows plan amendments made pursuant to SECURE 2.0 to be made on or before the last day of the first plan year beginning on or after January 1, 2025 (2027 in the case of governmental plans) as long as the plan operates in accordance with such amendments as of the effective date of a bill requirement or amendment. Section 501 also conforms the plan amendment dates under the SECURE Act, the CARES Act, and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 to these new dates (instead of 2022 and 2025).

XIII. MISCELLANEOUS

13.1. Section 104. Promotion of Saver's Match

- Current law. No provision.
- New law. Section 104 directs the Treasury Department to increase public awareness of the Saver's Match to increase use of the match by low and moderate income taxpayers. The promotion will make clear that the Saver's Match cannot be withdrawn without incurring penalties, including repayment to the Treasury Department in some cases where the Saver's Match is withdrawn from an individual retirement account before retirement. Taxpayers will have an election to designate a retirement account to receive the repaid Saver's Match.
- Effective date. The Treasury Secretary must report to Congress on the Treasury Department's anticipated promotion efforts no later than July 1, 2026.

13.2. Section 119. Application of section 415 limit for certain employees of rural electric cooperatives

- Current law. Under current law, IRC section 415 generally limits the amount that may be paid by a pension plan in annual benefits to a participant to the lesser of: (i) \$245,000 for 2022 or \$265,000 for 2023; or (ii) 100 percent of the participant's average compensation.
- New law. Section 119 amends IRC section 415(b) by adding a new paragraph (12) thereto that eliminates the compensation-based limit for participants who are non-highly compensated employees and participate in a rural electric cooperative retirement plan.
- Effective date. Limitation years ending after the date of enactment of SECURE 2.0.

13.3. Section 122. Assist States in locating owners of applicable savings bonds

- Current law. No provision.
- New law. To facilitate efforts to locate the owners of matured and unredeemed savings bonds, Section 122 requires the Treasury Secretary to share certain relevant information with a state that relates to an applicable savings bond registered to an owner with a last known or registered address in that state. The state is permitted to use that information to locate the registered owner in accordance with the state's standards for recovery of abandoned property. Section 122 further requires the Treasury Secretary to develop guidance as may be necessary to carry out the proper disclosure and protection of such information. The Treasury Secretary also is required to submit to the Senate Appropriations and Finance Committees and House Appropriations and Ways and Means Committees an annual report assessing its efforts to provide states with information on unclaimed savings bonds.
- Effective date. Date of enactment of SECURE 2.0.

13.4. Section 124. Modification of age requirement for qualified ABLE programs

- Current law. Current law allows states to create qualified ABLE programs [IRC section 529A], which are tax-advantaged savings programs for certain people with disabilities. Distributions from an ABLE account are tax-free if used for qualified disability expenses of the account's designated beneficiary.
- New law. Section 124 increases the age by which blindness or disability must occur for an individual to be an eligible individual by reason of such blindness or disability for an ABLE program.
- Effective date. Taxable years beginning after December 31, 2025.

13.5. Section 303. Retirement savings lost and found

- Current law. No provision.
- New law. Section 303 creates a national online searchable lost and found database for Americans' retirement plans at the Department of Labor ("DOL"). The database will enable retirement savers, who might have lost track of their pension or 401(k) plan, to search for the contact information of their plan administrator.
- Effective date. Section 303 directs the creation of the database no later than 2 years after the date of enactment of SECURE 2.0.

13.6. Section 305. Expansion of Employee Plans Compliance Resolution System ("EPCRS")

- Current law. The IRS provides a means by which plan sponsors and fiduciaries can correct operational errors connected to their plans. Revenue Procedure 2021-30 is the current iteration of the EPCRS procedure.
- New law. Section 305 expands the Employee Plans Compliance Resolution System ("EPCRS") to (1) allow more types of errors to be corrected internally through self-correction, (2) apply to inadvertent IRA errors, and (3) exempt certain failures to make required minimum distributions from the otherwise applicable excise tax. For example, Section 305 allows for correction of many plan loan errors through self-correction, which are a frequent area of error and can be burdensome to correct a single loan error through the Internal Revenue Service. Section 305 is effective on the date of enactment of SECURE 2.0.
- Effective date. Any guidance or revision of guidance required by Section 305 shall be promulgated no later than 2 years after the date of enactment of SECURE 2.0. Revenue Procedure 2021-30 (or any successor guidance) shall be updated to take into account the provisions of this section no later than 2 years after the date of enactment of SECURE 2.0.

13.7. Section 319. Review and report to Congress relating to reporting and disclosure requirements

- Current law. No provision.
- New law and effective date. Section 319 directs the Treasury Department, DOL, and Pension Benefit Guaranty Corporation to review reporting and disclosure requirements for pension plans as soon as practicable after enactment of SECURE 2.0. Section 319 further directs the agencies to make recommendations to Congress to consolidate, simplify, standardize, and improve such requirements no later than 3 years after the date of enactment of SECURE 2.0.

13.8. Section 321. Review of pension risk transfer interpretive bulletin

- Current law. No provision.
- New law and effective date. Section 321 requires the DOL to review the current interpretive bulletin governing pension risk transfers to determine whether amendments are warranted and to report to Congress its finding, including an assessment of any risk to participant, no later than 1 year after enactment of SECURE 2.0.

13.9. Section 324. Treasury guidance on rollovers

- Current law. No provision.
- New law and effective date. Section 324 requires the Treasury Secretary to simplify and standardize the rollover process by issuing sample forms for direct rollovers that may be used by both the incoming and outgoing retirement plan or IRA. Development and release of the sample forms must be completed no later than January 1, 2025.

13.10. Section 328. Repeal of direct payment requirement on exclusion from gross income of distributions from governmental plans for health and long-term care insurance

- Current law. Current law [IRC section 402(l)(5)(A)] provides an exclusion from gross income (\$3,000) for a distribution from a governmental retirement plan to a public safety officer to pay for their health insurance premiums. The exclusion requires that the plan directly pay the insurance premiums.
- New law. Section 328 repeals the direct payment requirement.
- Effective date. Distributions made after the date of enactment of SECURE 2.0.

13.11. Section 331. Special rules for use of retirement funds in connection with qualified federally declared disasters

- Current law. No provision.
- New law. Section 331 provides permanent rules relating to the use of retirement funds in the case of a federally declared disaster. It adds new subparagraph (M) to IRC section 72(t)(2). The permanent rules allow up to \$22,000 to be distributed from employer retirement plans or IRAs for affected individuals. Such distributions are not subject to the 10 percent additional tax and are taken into account as gross income over 3 years. Distributions can be repaid to a tax preferred retirement account. Additionally, amounts distributed prior to the disaster to purchase a home can be recontributed, and an employer is permitted to provide for a larger amount to be borrowed from a plan by affected individuals and for additional time for repayment of plan loans owed by affected individuals.
- Effective date. Disasters occurring on or after January 26, 2021.

13.12. Section 336. Report to Congress on section 402(f) notices

- Current law. IRC section 402(f) notices are given by employer retirement plans in the case of a distribution to a participant that is eligible for rollover to another tax preferred retirement account and describes distribution options and tax consequences.
- New law and effective date. Section 336 requires the Government Accountability Office to issue a report to Congress on the effectiveness of section 402(f) notices within 18 months after the date of enactment of SECURE 2.0.

13.13. Section 342. Information needed for financial options risk mitigation act

- Current law. No provision.
- New law. Section 342 requires pension plan administrators to provide plan participants and retirees with critical information that would allow people considering what is best for their financial futures to compare between benefits offered under the plan and the lump sum, and would explain how the lump sum was calculated, the ramifications of accepting a lump sum, such as the loss of certain federal protections, details about the election period, where to follow up with questions, and other information. Section 342 adds a new section 113 "NOTICE AND DISCLOSURE REQUIREMENTS WITH RESPECT TO LUMP SUMS" to ERISA.
- Effective date. The DOL Secretary must issue regulations implementing this provision not earlier than 1 year after enactment. Such regulations must be applicable not earlier than the issuance of a final rule and not later than 1 year after issuance of a final rule.

13.14. Section 344. Report on pooled employer plans

- Current law. Pooled employer plans were introduced into the law by the original SECURE Act.
- New law and effective date. Section 344 requires the DOL Secretary to conduct a study on the new and growing pooled employer plan industry. A report on the findings of the study must be completed within 5 years, with subsequent reports completed every 5 years thereafter.

13.15. Section 346. Worker Ownership, Readiness, and Knowledge (WORK) Act

- Current law. No provision.
- New law and effective date. Section 346 boosts employee ownership programs through the DOL, which may make grants to promote employee ownership through existing and new programs. Funds are authorized to be appropriated for the purpose of making grants for fiscal years 2025 to 2029.

13.16. Section 347. Report by the Secretary of Labor on the impact of inflation on retirement savings

- Current law. No provision.
- New law and effective date. Section 347 directs the DOL Secretary, in consultation with the Treasury Secretary, to study the impact of inflation on retirement savings and submit a report to Congress within 90 days on the findings of the study.

13.17. Section 605. Charitable conservation easements

- Current law. The tax deduction for charitable contributions of conservation easements [IRC section 170(h)] has long played a crucial role in incentivizing the preservation of critical habitat, open spaces, and historically important areas and structures. However, since 2016 IRS has identified certain syndicated conservation easement transactions involving pass-through entities as “listed transactions” carrying a high potential for abusive tax avoidance.
- New law. Section 605 disallows a charitable deduction for a qualified conservation contribution if the deduction claimed exceeds two and one half times the sum of each partner’s relevant basis in the contributing partnership, unless the contribution meets a 3 year holding period test, substantially all of the contributing partnership is owned by members of a family, or the contribution relates to the preservation of a certified historic structure. In the case of a contribution for the preservation of a certified historic structure, a new reporting requirement applies. Section 605 also provides taxpayers the opportunity to correct certain defects in an easement deed (excluding easements involved in abusive transactions) and makes certain changes to statute of limitations and penalty provisions.
- Effective date. Contributions made after the date of enactment of SECURE 2.0.

13.18. Section 701. Provisions relating to judges of the Tax Court

- Current law. Under current law [IRC section 7447(j)], Tax Court judges are allowed to contribute to the Thrift Savings Plan (“TSP”), but Tax Court judges are prevented from receiving TSP automatic or matching contributions. Other federal judges, in contrast, may receive automatic and matching contributions if they are not covered by a judicial retirement plan. If those judges later elect to receive judicial retirement benefits, their retired pay is offset by an amount designed to recapture those TSP automatic and matching contributions.
- New law. Section 701 provides parity between other federal judges and Tax Court judges by extending the same TSP matching contributions policy to Tax Court judges. Additionally, Tax Court judges may elect to participate in a plan providing benefits for the judge’s surviving spouse and dependent children. Benefits currently vest only after the judge has performed at least 5 years of service and made contributions for at least 5 years of service. In contrast, other federal judges vest after 18 months of service, and the 18-month period is waived if the judge is assassinated. Section 701 provides parity between other federal judges and Tax Court judges by applying the 18-month vesting period and assassination waiver to Tax Court judges. Lastly, Section 701 provides that compensation earned by retired Tax Court judges (i.e., those who are disabled or meet the recall requirements) for teaching is not treated as outside earned income for purposes of limitations under the Ethics in Government Act of 1978, and makes technical amendments to coordinate Tax Court judicial retirement with the Federal Employees Retirement System (“FERS”) and the retirement and survivors’ annuities plans.
- Effective date. Date of enactment of SECURE 2.0.

13.19. Section 702. Provisions relating to special trial judges of the Tax Court

- Current law. No provision.
- New law. Special trial judges of the Tax Court are the only judicial officers who do not have an option to participate in a judicial retirement program. Section 702 establishes a retirement plan under which a special trial judge may elect to receive retired pay in a manner and under rules similar to the regular judges of the Court. The provision provides parity between special trial judges of the Tax Court and other federal judges.
- Effective date. Eligible special trial judges are permitted to elect to receive retired pay 180 days after enactment of this Act, including special trial judges who retire on or after the date of enactment and before the date that is 180 days afterwards.



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NFM-22645AO (01/23)