The SECURE 2.0 Act of 2022

The SECURE 2.0 Act of 2022 ("SECURE 2.0") was passed by Congress and signed into law by President Biden on December 29th, 2022. The law contains 92 provisions, many of which are designed to expand retirement savings and coverage and simplify retirement plan rules. A number of these provisions will serve as the foundation for new plan formation among small businesses and may propel overall increased participation and savings rates.

This is one of the largest pieces of retirement plan legislation in some time. This legislation has been anticipated for nearly a year, with key features contained in previously proposed bills presented over the last several years. While some of these features are identical to what was previously proposed, others have been modified to some extent in the final version of the law.

Some of the provisions are effective immediately, or in 2023, while other provisions are effective in 2024 and later years. Some provisions require regulations and guidance that will be issued in the future. In most cases, any required regulation has a "due date" which, in theory, would provide enough time for plan sponsors and service providers to be ready to act when the time comes. As such, we expect a flurry of rules and regulations to be issued over the next several years, which will explain and help implement the new law.

Below are the highlights of retirement plan provisions of this legislation.

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SECURE 2.0 Key Provisions and Retirement Plan Highlights

Expanding Automatic Enrollment in 401(k) and 403(b) Plans

Automatic enrollment will become a mandatory feature for employers adopting a multiple employer plan and new plans for employers with 11 or more employees who have been in business for three or more years (church plans and governmental plans are excluded). Default rates may be set at anywhere from 3 to 10% with a 90-day unwind feature, with auto-escalation of 1% per year up to a maximum of at least 10% but no more than 15%. Existing plans are grandfathered. *This provision is effective for plan years beginning after December 31, 2024.*

Modification of Credit for Small Employer Plan Start Up Costs

New plan tax credits will increase from 50% to 100% of qualified start-up costs per year for 3 years, with a maximum of $5,000 per year for employers with 50 or fewer employees. Additionally, plans that offer employer contributions will receive an additional $1,000 tax credit with respect to eligible employees. This additional credit phases out for employers with 51-100 employees and phases out over five years. This serves as an even greater incentive for small businesses to start a retirement plan. *This provision is effective for tax years beginning after December 31, 2022.*

Saver's Match

The existing Saver's Match (a nonrefundable credit for contributions to IRAs and employer retirement plans) will be replaced by a Federal matching contribution in an amount equal to 50% of contributions up to $2,000 annually deposited into the individual's retirement account or IRA by the Treasury Department, phased-out as income increases. *This provision is effective for tax years beginning after December 31, 2026.*

Pooled Employer Plan (PEP) Modifications

PEPs may appoint any named fiduciary (other than a participating employer) as the party responsible for collecting contributions to the plan and for the implementation of "reasonable, diligent, and systematic" written contribution collection procedures. *This provision is effective for plan years beginning after December 31, 2022.*

403(b) Multiple Employer Plans (MEP)

Closed 403(b) MEPs (multiple employer plans with commonality) and PEPs are now permitted. This is good news for 403(b) plans who want to enjoy the advantages that closed MEPs offer. *This provision is effective for plan years beginning after December 31, 2022.*

Increase in Age for Required Minimum Distributions

The Required Minimum Distribution age has been increased to age 73 beginning in January 1, 2023 and age 75 starting on January 1, 2033.

Higher Catch Up Limits for Age 60, 61, 62 and 63 (Non-SIMPLE Plans)

Catch-up contributions limits have increased for participants age 60 - 63 to the greater of (i) $10,000, or (ii) 150% of the regular 2024 catch-up amount, indexed for inflation. *This provision is effective for tax years beginning after December 31, 2024.*

Treatment of Student Loan Payments as Elective Deferrals for Matching Contributions 401(k), 403(b), 457(b) governmental, and SIMPLE IRA plans

Qualified student loan payments may be treated as elective deferrals and qualify for employer matching contributions. Plans subject to Actual Deferral Percentage testing may separately test employees who receive matching contributions based on student loan repayments. *This provision is effective for plan years beginning after December 31, 2023.*

Withdrawals for Certain Emergency Expenses

The 10% excise tax applicable to early distributions from retirement plans will be waived for withdrawals for unforeseeable emergency expenses. This will apply to one distribution of up to $1,000 annually. Participants will also have the option to repay the distribution within three years. Only one distribution per three-year repayment period is permitted if a distribution has not been fully repaid. *This provision is effective for distributions made after December 31, 2023.*

Expanded Coverage for Long-Term Part-Time Workers

Employees who work 500 or more hours per year for two consecutive years must be eligible to participate in a retirement plan. SECURE 2.0 also extends these rules to 403(b) plans. *This provision is effective for plan years beginning after December 31, 2024. Keep in mind that the existing "three year rule" for 401(k) plans for long-term part-time workers that is in place under the current law will allow employees who meet the applicable requirements to be eligible for participation as early as January 1, 2024.*

Emergency Savings Accounts (Sidecar Accounts)

Employers may automatically enroll Non-Highly Compensated Employees into emergency savings accounts linked to their retirement plan account to make after-tax Roth contributions up to 3% of salary with a $2,500 maximum (indexed). *This provision is effective for plan years beginning after December 31, 2023.*

Enhancements for 403(b) Plans

Allows 403(b) custodial accounts to be invested in collective investment trusts (81-100 group trusts), and would be effective immediately. However, securities issues may still preclude such investments.

Retirement Savings Lost and Found

The DOL will create a national online database to help participants who may have lost track of their retirement plan benefits search for plan contact information. The DOL is directed to create the database no later than 2 years after the date of enactment of SECURE 2.0.

Employee Certification of Hardship Distribution Conditions

Participants may self-certify that they have met the qualifications for a hardship withdrawal. This significantly lessens the administrative burden for plan sponsors. *This provision is effective for plan years beginning after the date of enactment of SECURE 2.0.*

Retroactive First Year Elective Deferrals for Sole Proprietors

Sole proprietors may make retroactive deferral contributions to new 401(k) plans for the first year of the plan, up to the date of the employees' tax return filing due date (determined without regard to any extension). *This provision is effectivefor plan years beginning after the date of enactment of SECURE 2.0.*

Employers Allowed to Replace Simple Retirement Accounts with Safe Harbor 401(k) Plans

Employers will be allowed to replace SIMPLE IRA plans with Safe Harbor 401(k) plans at any point during the plan year. *This provision is effective for plan years beginning after December 31, 2023.*

Annual Audits for Group of Plans ("GoPs")

Participating employers with fewer than 100 employees within a Group of Plans are not required to submit an annual audit. This is an important provision for GoPs, as it addresses the question of whether a GoP could have a single audit for the entire GoP, similar to a MEP or PEP, rather than require a separate audit for each plan. *This provision takes effect on the date of enactment of SECURE 2.0.*

Safe Harbor for Correction of Employee Elective Deferral Failures

Employers may correct automatic enrollment and escalation errors as long as the corrections are made prior to 9½ months after the end of the plan year in which the mistakes were made (or based upon the date that an employee notifies a plan sponsor of the error, if earlier). This provision does not require a corrective contribution for the missed deferrals but the plan sponsor must contribute any missed matching contributions, plus earnings. *This provision takes effect with respect to errors made after December 31, 2023.*

Hardship Withdrawal Rules for 403(b) Plans

403(b) plan hardship withdrawal rules will be the same as 401(k) plan rules. *This provision takes effect for plan years beginning after December 31, 2023.*