

BENEFITS BRIEF

IMPLEMENTING AND ADMINISTERING THE MANDATORY AND OPTIONAL SECURE ACT RETIREMENT PLAN CHANGES

November 2023

The SECURE Act of 2019 (“SECURE”) and the SECURE 2.0 Act of 2022 (“SECURE 2.0”) made significant changes in the rules governing tax-qualified and tax-favored retirement plans. Some of those changes are currently effective and many will first come effective in 2024 – either January 1, 2024 or the first day of the 2024 plan year, depending upon the particular provision. While plan amendments to implement these changes are not required until later, operational compliance with the mandatory changes and the selected optional changes is necessary as of the applicable effective date.

In this *Benefits Brief*, we will summarize the more important currently effective and soon to be effective SECURE and SECURE 2.0 provisions affecting defined contribution plans of private employers, tax-exempt entities, and governmental entities.¹ We will also highlight actions plan sponsors and plan administrators will want to undertake to implement and properly administer these changes. More details about these changes, as well as a summary of the other SECURE 2.0 changes, can be found [here](#).

Provision	Mandatory or Optional	Comments
Qualified Federally Declared Disaster Distributions <ul style="list-style-type: none">• Up to \$22,000 per disaster.• “Qualified Individual” must live in disaster area and suffer economic loss.• Can repay up to 3 years from distribution.• For first 180 days after the disaster, loans can be allowed up to the lesser of \$100,000 or vested balance.• Limited 1yr deferral on loan payments.• Amounts withdrawn for home purchase can be recontributed if not used.	Optional – currently effective	

¹ This *Benefits Brief* will not discuss changes affecting SIMPLE and SEP plans, or defined benefit, collectively bargained, or church plans.

<p>Ability to Elect Matching Contributions and Nonelective Contributions to be Treated as Roth Contributions</p> <ul style="list-style-type: none"> • Participants can designate match and nonelective contributions to be treated as Roth. • Contributions must be 100% vested when made. 	<p>Optional – currently effective</p> <p>This provision is not applicable to 457(b) plans of tax-exempt sponsors.</p>	<p>Plan sponsors and administrators will likely want to defer adding this provision until Treasury guidance is issued.</p>
<p>Reporting Distributions to Terminally Ill Participants</p> <ul style="list-style-type: none"> • Plan administrators who receive “sufficient evidence” from a terminally ill participant of his/her condition must report the distribution as exempt from the premature distribution penalty (generally applicable to taxable distributions to participants who have not attained age 59 ½). 	<p>Mandatory – currently effective</p> <p>This provision is not applicable to 457(b) plans.</p>	<p>The distribution must otherwise be permitted under the plan terms; this provision does not create a new permitted distributable event.</p>
<p>Plan Administrators Can Rely on Employee Hardship/Unforeseeable Emergency Self-Certifications Absent Actual Knowledge</p> <ul style="list-style-type: none"> • Absent knowledge to the contrary, plan administrators can rely on a participant’s written representation (i) of immediate and heavy financial need/unforeseeable emergency, (ii) the request is not in excess of the amount of the need, and (iii) the participant 	<p>Optional – currently effective</p> <p>This provision is not applicable to 457(b) plans of tax-exempt sponsors.</p>	<p>The ability to obtain a hardship or unforeseeable emergency withdrawal without written substantiation may result in a proliferation of questionable distribution requests so plan administrators must carefully monitor hardship withdrawals even if not approving them in advance.</p> <p>Plan sponsors and administrators who wish to implement this provision should discuss it with the plan’s third party</p>

has no other means to satisfy the hardship/unforeseeable emergency.		administrator and recordkeeper.
<p>Required Minimum Distribution Commencement Age Increased to Age 73</p> <ul style="list-style-type: none"> RMDs must begin at 73 for participants attaining age 72 after 12/31/22 and attaining age 73 before 1/1/2033. 	Mandatory – currently effective	This provision does not change the ability of a participant who is not a “five-percent owner” to defer the commencement of his/her distribution until retirement.
<p>Repeal of the First Day of Month Deferral Change Rule for Governmental 457(b) Plans</p> <ul style="list-style-type: none"> A governmental 457(b) plan participant may change his/her deferral election at any time provided the election is made before the compensation is made available. 	Mandatory – currently effective	
<p>Catch-up Deferrals for Higher Paid Employees Must be Roth Contributions</p> <ul style="list-style-type: none"> Participants with compensation from the sponsor or an affiliated employer >\$145,000 in the prior calendar year can only make “catch-up deferrals” as Roth contributions. Plan must allow participants subject to this rule to change his/her deferral election. 	<p>Mandatory – starting in 2024 – deadline extended to January 1, 2026</p> <p>This provision is not applicable to 457(b) plans of tax-exempt sponsors.</p>	<p>Plan administrators are not required to prove “good faith compliance” to qualify for the extension.</p> <p>The IRS has indicated that catch-up contributions will be permitted in 2024 despite language in SECURE 2.0 that suggested otherwise.</p> <p>The IRS Notice granting the extension explains that the IRS and Treasury Department intend to issue further guidance on implementation. That guidance is expected to</p>

		confirm that this provision will not apply to plan participants who do not have FICA wages, such as partners and other self-employed individuals.
Pre-Death Required Minimum Distributions no Longer Required for Roth Accounts in 401(k), 403(b), and Governmental 457(b) Plans	Optional – effective with the 2024 taxable year	
Deferral Rights of “Long-Term Part-Time” Employees/Optional Employer Contributions in 401(k) and 403(b) Plans <ul style="list-style-type: none"> An employee who is age 21 and has 500 or more hours of service in each of three <i>consecutive</i> 12-month periods is a “long-term part-time employee” (“LTPT employee”). Beginning January 1, 2025, only two consecutive 12-month periods of 500 or more hours of service is required. LTPT employees must be allowed to make elective deferrals. Deferrals by LTPT employees are ignored for nondiscrimination testing. Can allow LTPT employees to receive employer contributions but not required. Section 401(k) plans can ignore service before January 1, 2021 and Section 403(b) plans can ignore service before January 1, 2023. 	Mandatory – starting with 2024 plan year (effectively 2025 for 403(b) plans*) This provision is not applicable to governmental 403(b) plans.	Plan sponsors and administrators must assure they can obtain the necessary information from the payroll system to assure identification of LTPT employees. Communication with the plan’s TPA and recordkeeper will also be needed to track these employees for nondiscrimination testing. Plan sponsors will likely want to defer making these employees eligible for employer contributions until Treasury guidance is issued. *Section 403(b) plans will no longer be able to rely on exemptions from the “universal availability” deferral rule for employees who normally perform fewer than 20 hours per week or employees who are enrolled as full-time students and are regularly attending classes.

<p>Student Loan Repayments May be Treated as Elective Deferrals for Calculating Matching Contributions</p> <ul style="list-style-type: none"> • Cannot exceed deferral level subject to match and match must be (i) at same rate as match on elective deferrals, (ii) not subject to different eligibility criteria than match on elective deferrals, and (iii) same vesting as match on elective deferrals. • Participants must certify the amount of repayments. • For minimum coverage and nondiscrimination testing rules, this benefit is considered available to participants without student debt. • Special deferral testing rules apply - nondiscrimination testing for elective deferrals can be separate from testing for qualified loan payments. 	<p>Optional – starting with 2024 plan year</p>	<p>Plan sponsors will likely want to defer implementation of this provision until Treasury guidance is issued.</p>
<p>Plan-Associated “Emergency Savings Accounts” Permitted</p> <ul style="list-style-type: none"> • “Emergency Savings Accounts” allowed for non-highly compensated who meet are eligible to participate in the plan. • Contributions must be Roth and total balance cannot exceed \$2,500 or lesser amount designated by plan. • Employee contributions must be considered for 	<p>Optional – starting with 2024 plan year</p> <p>This provision is not applicable to governmental plans.</p>	<p>Plan sponsors and administrators interested in adding this provision will need to discuss implementation with the plan’s third party administrator and recordkeeper. This provision could be difficult to implement and participant interest may be limited.</p>




<p>calculating match and annual contribution limits.</p> <ul style="list-style-type: none"> • Balances must be accounted for separately and invested in investments that maintain the dollar amount of contributions. • Withdrawals must be permitted at least monthly and the first four withdrawals cannot have fees. • Auto enrollment w/ 3% initial deferral permitted if different % can be elected or can opt-out and certain disclosures made. • State garnishment laws are preempted if auto enrollment used. • Upon participant's termination or sponsor's elimination of this provision, the balance must be transferred to the participant's plan Roth account or distributed to him/her. 		
<p>Domestic Violence Withdrawals Permitted</p> <ul style="list-style-type: none"> • Distribution allowed to domestic abuse victim during 1-year period after the abuse occurs from plans not subject to the qualified joint and survivor annuity provisions. • Cannot exceed lesser of \$10,000 or 50% of vested balance. • Victim can self-certify. • Repayment provisions apply. 	<p>Optional – starting in 2024</p> <p>This provision is not applicable to 457(b) plans of tax-exempt employers.</p>	

<p>Emergency Expense Withdrawals Permitted</p> <ul style="list-style-type: none"> • Withdrawals permitted for personal or family emergency expenses. • Withdrawals limited to lesser of \$1,000 or vested balance. 	<p>Optional – starting in 2024</p> <p>This provision is not applicable to 457(b) plans of tax-exempt employers.</p>	
<p>Limit on Involuntary Cash-out Distributions Increased to \$7,000 (from \$5,000)</p>	<p>Optional – starting with 2024 plan year</p> <p>This provision is not applicable to governmental plans</p>	<p>Plans with a cash-out provision will want to implement this provision.</p> <p>This change does not change the requirement that cash-out amounts in excess of \$1,000 be rolled to an IRA in the participant’s name.</p>
<p>Additional Contribution Sources Available for 403(b) Plan Hardship Withdrawals</p> <ul style="list-style-type: none"> • Earnings on 403(b) deferrals and qualified matching and qualified nonelective contributions are eligible for hardship withdrawal. • Obtaining a loan is not a prerequisite to receiving a hardship withdrawal. 	<p>Optional – starting with the 2024 plan year</p>	<p>This provision conforms the 403(b) hardship rules with the 401(k) plan hardship rules.</p>

PLAN SPONSOR AND ADMINISTRATOR
ACTION ITEMS

Although the deadline to implement the most challenging of the SECURE provisions (i.e., mandatory Roth catch-up deferrals) has been extended², plan sponsors and administrators will want to discuss the remaining SECURE provisions with their recordkeeper and third

² Amendments to adopt discretionary, non-SECURE changes must generally be adopted by the last day of the plan year in which they are to be effective, however, certain discretionary, non-SECURE amendments must be executed before their effective date.



party administrator so necessary procedures are in place for implementing and administering the mandatory and desired changes and assuring appropriate disclosures are made to participants. The form of the notice to affected participants may depend upon the recordkeeper and TPA; because plan amendments are delayed, recordkeepers and TPAs may be reluctant to issue an updated summary plan description explaining the changes in administration and may prefer a simple notice to participants (with an updated summary plan description to be provided once the plan is formally amended).

Section 401(k) and 403(b) plan sponsors and administrator will need to assure payroll systems are prepared to accumulate the information needed for identifying and enrolling eligible long-term part-time employees and the recordkeeping system can appropriately track them.

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