



BENEFITS BRIEF

SECURE 2.0: AN OVERVIEW OF THE KEY PROVISIONS

March 2023

In a rare display of bipartisanship these days, Congress approved major changes to retirement plans and their participants in the closing days of 2022. Included in the Consolidated Appropriations Act of 2023 was Division T, the “SECURE 2.0 Act of 2022” (or “SECURE 2.0”). These provisions are designed to build on the SECURE Act of 2019 (“SECURE 1.0”) to strengthen the country’s retirement system by expanding retirement savings opportunities and simplifying existing retirement plan rules. Without question, SECURE 2.0 is the most significant and far-reaching legislation affecting retirement plans in some time.

In this *Benefits Brief*, we will focus on the key provisions of SECURE 2.0 affecting defined contribution retirement plans¹ and their plan sponsors and participants; our overview will be broken down by the provisions affecting Tax-Qualified, Section 403(b), and Section 457(b) Plans and those affecting SEPs² and SIMPLE plans. In addition, we will highlight some changes of arguably lesser significance affecting these plan types and their participants, some key changes affecting IRAs and their owners, and summarize the various studies and other action items Congress is requiring of the governmental agencies with responsibility over retirement plans.

AMENDMENT DEADLINE AND OPERATIONAL COMPLIANCE

Amendments to nongovernmental tax-qualified and Section 403(b) plan documents reflecting the SECURE 2.0 changes are not required before the last day of the first plan year beginning on or after January 1, 2025 (or December 31, 2025 for calendar year plans), provided plans are administered consistent with those changes from their effective dates.

It is not clear when amendments are required to SEP and SIMPLE plans or 457(b) plans of tax-exempt employers, but a fair reading of the Act suggests the same deadline will apply to those plans.

Amendments to governmental plans are required by the last day of the first plan year beginning on or after January 1, 2027, subject also to the requirement that plans are administered consistent with the adopted amendments.³

¹ We will not discuss the changes affecting defined benefit, collectively bargained, or church plans.

² SEPs refer to “Simplified Employee Pensions” under Code Section 408(k).

³ These deadlines also apply to plan document amendments required for SECURE 1.0, the Coronavirus Aid, Relief and Economic Security (CARES) Act, and the Taxpayer Certainty and Disaster Relief Act of 2020.

CHANGES AFFECTING TAX-QUALIFIED,
SECTION 403(b),
AND SECTION 457(b) PLANS

Provision	Mandatory or Optional/ Effective Date	Comments/Observations/ Related Changes
Effective Retroactively or Upon Enactment (December 29, 2022):		
<p>Qualified Federally Declared Disaster Distributions [§ 331]</p> <p>Plans may permit distributions to qualified individuals affected by certain federally declared natural disasters of up to \$22,000 per disaster. All plans of members of a controlled group must be aggregated for purposes of that limit.</p> <p>A “qualified individual” is a participant whose principal place of abode was in the disaster area and who suffered an economic loss due to the disaster.</p> <p>Plans can allow the repayment of disaster distributions up to three years following the withdrawal in one or more contributions by the qualified individual.</p> <p>For 180 days after the disaster, a plan can allow participant loans to qualified individuals up to an aggregate of \$100,000 (from \$50,000), but not in excess of the participant’s vested account balance (up from 50% of the participant’s vested account balance).</p> <p>A plan can permit a qualified individual with a participant loan outstanding to defer payments due within the 180-day period commencing on the disaster date for up to one year; the loan must be re-amortized to reflect any deferral.</p> <p>Plans can allow the recontribution of distributions made to purchase a home in the disaster area if the funds are not used for that purpose.</p>	Optional – for disasters occurring on or after January 26, 2021	<p>This is a new permissible, rather than mandatory, distribution option.</p> <p>Qualifying distributions are exempt from the premature distribution penalty (generally applicable to distributions paid prior to 59 ½).</p> <p>Special income inclusion rules also apply to recipients.</p>

Provision	Mandatory or Optional/ Effective Date	Comments/Observations/ Related Changes
Repayment Period for Qualified Birth or Adoption Distributions (QBADs) Clarified [§ 311] SECURE 2.0 limits the repayment period of QBADs to three years from the date of the distribution and a deadline of December 31, 2025 for QBADs made before December 29, 2022.	Mandatory - effective December 29, 2022	SECURE 1.0 permitted plans to make QBADs of up to \$5,000 to qualifying participants. SECURE 1.0 also allowed plans to permit the repayment to the plan of the prior distribution but did not specify the deadline for those repayments.
Ability to Elect Matching Contributions and Nonelective Contributions to be Treated as Roth Contributions [§ 604] Plans can permit participants to designate matching contributions and nonelective contributions (i.e., employer contributions allocated without regard to a participant's deferral or after-tax contributions made) to be treated as Roth contributions. These contributions must be 100% vested when made.	Optional – for contributions made after December 29, 2022 Not applicable to 457(b) plans of tax-exempt employers	Electing participants will be taxed on the amount of the contributions when made. Recordkeeping systems will have to be revised to accommodate this election and those changes integrated with the sponsor's payroll system. In addition, IRS guidance will be needed on payroll tax withholding mechanics applicable to contributions so elected.
403(b) Plans Eligible to Invest in Collective Investment Trusts [§ 128] The Internal Revenue Code provision prohibiting Section 403(b) plans with custodial accounts [under Section 403(b)(7)] from investing in collective investment trusts has been revised to allow those investments.	Optional – December 29, 2022	Federal securities law must first be amended before these investments can be made.
Reporting Distributions to Terminally Ill Participants [§ 326] A terminally ill participant who provides “sufficient evidence” to the plan administrator can receive a distribution from the plan exempt from the premature distribution penalty (generally applicable to participants younger than 59 ½). The plan administrator must have “sufficient evidence” to properly	Mandatory – for distributions made after December 29, 2022 Not applicable to 457(b) plans	This provision does not create a distributable option for a plan; rather, the participant must already qualify for a distribution from the plan. This provision simply exempts qualifying distributions from the premature distribution penalty. The statute tasks the Treasury Department to issue

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<p>code the distribution on the Form 1099R.</p> <p>For this purpose, a terminally ill participant is one who is certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 84 or fewer months at the time of the certification.</p> <p>The participant can repay the distribution consistent with the repayment rules applicable to Qualified Birth or Adoption Distributions under Section 72(t)(2)(H).</p>		<p>regulations to define “sufficient evidence.”</p> <p>It is not clear whether the plan sponsor could refuse to accept repayment of the distribution.</p>
<p>Rules Governing Inadvertent Plan Overpayments Clarified [§ 301]</p> <p>A plan will not generally fail to be considered tax-qualified nor will a fiduciary be considered to have breached his/her/its fiduciary duties for failure to pursue recovery of an inadvertent plan overpayment.</p> <p>Clarifies that both the Internal Revenue Code and ERISA permit pursuing recoveries from participants, including offset of future benefit payments, provided neither interest nor collection charges can be charged, there are limits on the amounts that can be offset, and limits on how far back overpayments can be recovered.</p>	<p>Mandatory – effective December 29, 2022</p> <p>Not applicable to governmental plans</p>	
Effective in First Year After Enactment:		
<p>De Minimis Financial Incentives to Participate Permitted [§ 113]</p> <p>401(k) and 403(b) plan sponsors can provide de minimis financial incentives to encourage plan salary deferrals provided those incentives are not paid from plan assets.</p>	<p>Optional – for plan years beginning after December 29, 2022</p>	<p>“De minimis” is not defined but it has been suggested that small value gift cards are likely permissible.</p>

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<p>Plan Administrators Can Rely on Employee Hardship/Unforeseeable Emergency Self-Certifications Absent Actual Knowledge [§ 312]</p> <p>Absent actual knowledge to the contrary, a plan administrator can rely on a participant's written representation that (i) a requested withdrawal on account of financial need is deemed under the regulations to be an immediate and heavy financial need, (ii) the amount requested is not in excess of the amount of the need, and (iii) the participant has no alternative means reasonably available to satisfy that need.</p> <p>Similar self-certification rules apply to unforeseeable emergency withdrawals from a governmental 457(b) plan.</p>	<p>Optional – for plan years beginning after December 29, 2022</p>	<p>Presently, a participant must provide the plan administrator documentation to substantiate the existence of the hardship or unforeseeable emergency but can self-certify he/she lacks other reasonable means to satisfy the need.</p> <p>This provision will be a welcome relief to plan administrators.</p> <p>Hardship policies and hardship withdrawal forms will need to be amended; a plan amendment may also be needed.</p>
<p>Relaxed Notice Rules for “Unenrolled” Participants [§320]</p> <p>Plans which provide a summary plan description and other required enrollment notices to an eligible employee who does not become a participant (i.e., who does not defer and does not have an employer contribution made on his/her behalf) can, in lieu of providing the otherwise applicable disclosures, provide the “unenrolled participant” an annual notice describing his/her right to participate and any notices provided to enrolled participants the unenrolled participant requests. The notice must be provided a reasonable period of time before the beginning of each plan year.</p>	<p>Optional – for plan years beginning after December 31, 2022</p> <p>Not applicable to governmental plans</p>	<p>As appealing as this sounds, this provision is likely more trouble than it is worth. With the proliferation of electronic disclosures these days, it is likely less trouble not to distinguish between participants and to instead distribute the same notices to all participants.</p>

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Required Minimum Distribution Commencement Age Increased to Age 73 [§107] The age used to determine when required minimum distributions must commence is increased to age 73 – with respect to participants who attain age 72 after December 31, 2022 and will attain age 73 before January 1, 2033.	Mandatory – for participants attaining age 72 after December 31, 2022	A plan is not required to allow participants to defer distributions until required minimum distributions must commence. For example, a plan may retain the age 70 ½ or age 72 limit. The excise tax payable by a participant for underpayment of a required minimum distribution is reduced under SECURE 2.0 from 50% of the underpayment to 25%. The penalty is further reduced to 10% of the underpayment if it is corrected generally within a two-year correction window and the participant files a tax return reflecting the tax.
Section 403(b) Plans can be Maintained as Part of a Multiple Employer Plan (MEP) or a Pooled Employer Plan (PEP) [§ 106] Section 403(b) plans can now be maintained as part of a MEP or PEP.	Optional – for plan years beginning after December 31, 2022	This change conforms the treatment of 403(b) plans to qualified plans.
Prohibited Transaction Relief for Auto-Portability Service Providers [§ 120] Subject to a number of requirements, service providers that facilitate the transfer of IRAs resulting from involuntary cash-out distributions to the IRA owner's new retirement plan are eligible for a prohibited transaction exemption in connection with those transfers.	Optional – one year after December 31, 2022 Not applicable to governmental 457(b) plans	The Department of Labor is tasked with issuing regulations to implement this provision.
The “First Day of the Month” Requirement for Deferral Changes in Governmental 457(b) Plans is Repealed [§ 306]	Mandatory – Tax years beginning after December 29, 2022	Presently, a governmental 457(b) plan cannot permit a participant to change his/her deferral election except as of the first day of a calendar

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A participant can change his/her deferral election under a governmental 457(b) plan at any time before the compensation is made available (subject to more restrictive plan terms).		month by a deferral election completed before that day.
Effective in Years After December 31, 2023:		
Pre-Death Required Minimum Distribution no Longer Required for Roth Accounts [§ 325] Roth accounts under a 401(k), 403(b), or a governmental 457(b) [corrected] plan are no longer subject to required minimum distribution rules before the death of the participant.	Optional – for tax years beginning after December 31, 2023	This change conforms the treatment of Roth plan accounts with the rules applicable to Roth IRAs.
Catch-up Deferrals for Higher Paid Employees Must be Roth Contributions [§603] Participants whose compensation from the plan sponsor exceeded \$145,000 (as adjusted for cost of living) in the preceding calendar year can only make “catch-up deferrals” on a Roth basis. Plans are required to offer an option to change deferral elections to those participants who become subject to this provision. In addition, participants not subject to this provision must be permitted to elect to have their catch-up deferrals to be treated as Roth deferrals.	Mandatory – for tax years beginning after December 31, 2023 Not applicable to 457(b) plans of tax-exempt employers	The definition of compensation is based on compensation for FICA purposes so this provision does not appear on its face to apply to self-employed individuals (e.g., sole proprietors, partners, and LLC members). It is possible this provision could be revised in a technical corrections bill. Because the \$145,000 compensation level is not used for any other plan purposes, this provision adds another category of participants to track. Whether a deferral is a catch-up deferral or a “regular” deferral often cannot be made until after the end of a plan year so this provision has the potential to cause considerable disruptions in plan recordkeeping, especially since deferrals must be deposited into the plan trust promptly after each payroll

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		to satisfy DOL regulations. This will likely necessitate transfers from pre-tax accounts to Roth accounts after the plan year testing is completed.
<p>Student Loan Repayments May be Treated as Elective Deferrals for Calculating Matching Contributions[§ 110]</p> <p>Plans can treat higher education student loan repayments as elective deferrals for purposes of calculating employer matching contributions. The amount considered cannot exceed the level of deferral contributions subject to the match (reduced by elective deferrals made) and the matching contribution allocated on loan repayments (i) must be at the same rate as matching contributions made on elective deferrals, (ii) must not be subject to different eligibility criteria than matches on elective deferrals, and (iii) must be subject to the same vesting schedule as matching contributions made on elective deferrals.</p> <p>Eligible participants must certify the amount of qualifying repayments made and the plan administrator can rely on those certifications.</p> <p>For purposes of the minimum coverage rules and nondiscrimination rules, this benefit is considered as being available to all participants, even those with no higher education student debt.</p> <p>Special deferral testing rules apply – so plan administrators can perform the nondiscrimination testing for participants who make elective deferrals separately from those who make qualified loan repayments.</p>	Optional – for plan years beginning after December 31, 2023	The Treasury Department is tasked with issuing (i) a model amendment plan sponsors can adopt to add this provision, and (ii) regulations permitting matching contributions on student loan repayments to be made at a different frequency than those applicable to deferrals and allowing plan administrators to establish reasonable procedures for administering this provision.

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<p>“Starter” Plans for Employers With no Retirement Plan [§121]</p> <p>Employers without a retirement plan can establish a “deferral-only” 401(k) plan or a safe harbor 403(b) plan. Provided employees are automatically enrolled (subject to an employee’s right to opt-out or elect a different deferral percentage) and subject to automatic deferral election of up to 15% of compensation (also subject to opt-out). These plans are not subject to any deferral testing or top-heavy testing and are subject to the same deferral limits as SIMPLE plans.</p>	<p>Mandatory – for plan years beginning after December 31, 2023</p>	<p>These are two permissible plan design choices.</p>
<p>Plan-Associated “Emergency Savings Accounts” Permitted [§127]</p> <p>Plans can allow the establishment of an “emergency savings account” with respect to non-highly compensated employees who otherwise meet the eligibility requirements of the plan.</p> <p>The contributions in the account must be funded as Roth contributions and cannot exceed a total balance attributable to participant contributions of \$2,500 (as indexed for inflation) or a lesser amount designated by the plan sponsor.</p> <p>Employee contributions must be considered for purposes of calculating matching contributions and they must be considered in applying annual contribution limits.</p> <p>Balances in these accounts must be accounted for separately from other plan contributions and must be invested in an investment designed to maintain the dollar amount of the contributions made.</p>	<p>Optional – for plan years beginning after December 31, 2023</p> <p>Not applicable to governmental plans</p>	<p>This is a new permissible, rather than mandatory, distribution option.</p> <p>Qualifying distributions are exempt from the premature distribution penalty (generally applicable to distributions paid prior to 59 ½).</p>

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<p>Withdrawals must be permitted at least monthly and the first four withdrawals during a calendar year must be allowed without any fees imposed.</p> <p>Automatic enrollment with an initial deferral rate of 3% is permitted so long as a participant can elect a different percentage or opt-out and certain disclosures are made by the plan administrator. State garnishment laws are preempted with respect to the automatic enrollment aspect of this provision.</p> <p>Upon a participant's termination of employment or the sponsor's elimination of these accounts, participants can transfer their balance to the plan's Roth account or receive a distribution.</p>		
<p>Domestic Violence Withdrawals Permitted [§ 314]</p> <p>Plans not subject to the qualified joint and survivor benefit requirements may allow a distribution to a domestic abuse victim during the one-year period beginning on any date on which an individual is a victim of domestic abuse by a spouse or domestic partner.</p> <p>The distribution cannot exceed the lesser of \$10,000 (as indexed for cost of living) or 50% of the participant's vested account balance.</p> <p>The plan administrator can rely on the victim's self-certification.</p> <p>The participant can repay the distribution consistent with the repayment rules applicable to Qualified Birth or Adoption Distributions under Section 72(t)(2)(H).</p>	<p>Optional - for distributions made on or after December 31, 2023</p> <p>Not applicable to 457(b) plans of tax-exempt employers</p>	<p>This is a new permissible, rather than mandatory, distribution option.</p> <p>Qualifying distributions are exempt from the premature distribution penalty (generally applicable to distributions paid prior to 59 ½).</p>

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<p>Emergency Expense Withdrawals Permitted [§ 115]</p> <p>Plans may allow participant withdrawals to meet unforeseeable or immediate financial needs relating to personal or family emergency expenses.</p> <p>Withdrawals are limited to the lesser of \$1,000 or the participant's vested account balance.</p> <p>No more than one withdrawal can be made in one calendar year. The participant can repay the distribution consistent with the repayment rules applicable to Qualified Birth or Adoption Distributions under Section 72(t)(2)(H). No emergency expense distribution can be made within the three succeeding calendar years unless the prior withdrawal has been repaid in full or the participant has contributed through salary deferrals an amount equal to or greater than the amount of the prior withdrawal.</p> <p>The plan administrator can rely on the participant's certification that the participant is entitled to the withdrawal.</p> <p>The dollar limit and number of withdrawals is determined by aggregating all plans of the controlled group that includes the participant's employer.</p>	<p>Optional – for distributions made after December 31, 2023</p> <p>Not applicable to 457(b) plans of tax-exempt employers</p>	<p>This is a new permissible, rather than mandatory, distribution option.</p> <p>Qualifying distributions are exempt from the premature distribution penalty (generally applicable to distributions paid prior to 59 ½).</p> <p>The expectation is an employee may be more likely to participate in a plan if he/she can access funds in the event of a personal emergency</p>
<p>Limit on Involuntary Cash-out Distributions Increased to \$7,000 (from \$5,000) [§ 304]</p> <p>The involuntary cash-out limit is increased to \$7,000.</p>	<p>Optional – for plan years beginning after December 31, 2023</p> <p>Not applicable to governmental plans</p>	<p>Presently, plans can require a terminated participant whose vested account balance is \$5,000 or less to take a distribution from the plan.</p> <p>The requirement that involuntary cash-outs of \$1,000 or more be rolled-over to a default IRA is not changed.</p>

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Special Top-Heavy Rules that Permit “Early” Participation [§310] Plans that permit “early” participation (i.e., earlier than the maximum age and service requirements would require) are subject to favorable testing rules for determining whether the plan is top-heavy; such plans can exclude employees not satisfying the maximum age and service requirements that could be imposed.	Optional – for plan years beginning after December 31, 2023 Not applicable to 403(b), 457(b), or governmental plans	This provision conforms the top-heavy rules with other nondiscrimination rules.
Post-Plan Year End Discretionary Amendments Increasing Nonelective Contributions Permitted [§316] A qualified plan can now be amended after the end of a plan year to increase the nonelective (but not matching) contributions in the preceding plan year provided the amendment is executed by the due date of the employer’s tax return (as extended) for the tax year that includes the last day of the plan year.	Optional – for plan years beginning after December 31, 2023 Not applicable to 403(b) or 457(b) plans	Presently, a qualified plan cannot be amended after the end of a plan year to change the contribution allocation formula, even to increase benefits to participants, except in limited circumstances described in the regulations to correct a coverage failure.
Safe Harbor Correction for Elective Deferral Failures Extended [§350] Plans are provided an extended period of time to correct errors in plans with automatic enrollment and automatic escalation. Provided the plan sponsor corrects the error within 9 ½ months of the end of the plan year or if earlier, the first payroll paid on or after the last day of the month following the month in which the sponsor is notified of the error, missed matching contributions must be restored (with earnings) but missed deferrals do not have to be restored.	Optional – for errors occurring after December 31, 2023	Treasury regulations will be necessary to implement this provision. This provision codifies and expands an expiring temporary correction methodology under the IRS Employee Plans Compliance Resolution System.

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Notice must be provided to affected participants.		
Conforming 403(b) and 401(k) Hardship Rules [§ 602] The rules governing 403(b) hardships are liberalized to allow (i) the distribution of qualified nonelective and qualified matching contributions and (ii) the earnings on those accounts and the earnings on elective deferral accounts. In addition, participants are not required to take a participant loan (if offered under the plan) as a condition to receive a hardship withdrawal.	Mandatory – for plan years beginning after December 31, 2023	This provision confirms the treatment of hardships under Section 403(b) plans with the rules applicable to 401(k) plans.
Clarification of Family Attribution Rules [§ 315] The rules attributing ownership of a company for purposes of nondiscrimination testing are modified to (i) ignore community property laws and (ii) clarify application of the attribution requirements between parents and minor children where the parents each own a business separate from the other spouse.	Mandatory – plan years beginning after December 31, 2023	
Effective in Years After December 31, 2024:		
Automatic Enrollment and Escalation Required for Most Plans Established After December 28, 2022 [§ 101] Other than excepted plans (described below), a 401(k) or 403(b) plan established after December 28, 2022 must contain the following provisions: (i) An automatic enrollment provision with the initial deferral between 3% and 10%;	Mandatory – for plan years beginning after December 31, 2024 Not applicable to governmental plans	

Provision	Mandatory or Optional/ Effective Date	Comments/Observations/ Related Changes
<ul style="list-style-type: none"> (ii) An automatic escalation of 1% per year up to a maximum of at least 10% but not more than 15%; (iii) Contributions on behalf of participants who do not make an investment election must be invested in an investment qualifying as a “qualified default investment alternative” under DOL rules; (iv) A right to opt-out or change the deferral election; and (v) A limited right of withdrawal of contributions following initial eligibility. <p>Excepted plans are:</p> <ul style="list-style-type: none"> (i) Plans of employers who have been in business for less than three years; (ii) Plans of employers with fewer than 10 employees – until the first day of the taxable year of the plan sponsor that is one year following the last day of the taxable year in which the plan sponsor had 10 or more employees; (iii) Governmental and church plans; and (iv) SIMPLE 401(k) Plans and IRAs. 		
<p>Increased Catch-up Deferral Limit for Older Participants [§109]</p> <p>Participants at least age 60 but younger than age 64 by the end of the calendar year have an increased catch-up deferral limit; the catch-up limit is the greater of \$10,000 or 150% of the 2024 catch-up limit (as</p>	<p>Mandatory – for taxable [corrected] years beginning after December 31, 2024</p> <p>Not applicable to 457(b) plans of tax-exempt employers</p>	

Provision	Mandatory or Optional/ Effective Date	Comments/Observations/ Related Changes
indexed for inflation) applicable to other plan participants.		
<p>Reduced Service Requirement for Eligibility of “Long-Term Part-Time” Employees [§ 125]</p> <p>The number of consecutive years required for a “long-term part-time” (or “LTPT”) employee to become eligible has been reduced from three years to two years.</p> <p>If matching or nonelective contributions are allocated to LTPT employees, service prior to 2021 can be ignored for vesting purposes except as described below regarding 403(b) plans.</p> <p>These rules are now applicable to ERISA -governed Section 403(b) plans.</p> <p>Service prior to January 1, 2023 can be ignored for purposes of determining vesting in matching and nonelective contributions allocated under a 403(b) plan to LTPT employees.</p>	<p>Mandatory – for plan years beginning after December 31, 2024</p> <p>Not applicable to governmental plans</p>	<p>A detailed summary of the SECURE 1.0 rules can be found here.</p> <p>SECURE 1.0 required 401(k) plans to provide “long-term part-time” employees the opportunity to defer under the plan. An employee had to have three consecutive years in which he/she worked between 500 and 1,000 hours during the plan year, starting with the 2021 plan year, to be considered a LTPT employee.</p> <p>SECURE 1.0 also permitted LTPT employees to receive matching and nonelective contributions if the plan so provided.</p> <p>This provision should not be a significant issue with deferrals under a 403(b) plan due to the “universal availability” requirement applicable to those plans.</p>
<p>Withdrawals Permitted for Payment of Certain Long Term Care Expenses [§334]</p> <p>Plans may allow withdrawals for the payment of certain long term care insurance premiums to employees who certify the coverage maintained. The annual limit on withdrawals in a taxable year is limited to the smallest of:</p> <ul style="list-style-type: none"> (i) The premiums paid for coverage of the participant, his/her spouse, and other 	<p>Optional – December 29, 2025</p>	<p>This is a new permissible, rather than mandatory, distribution option.</p> <p>Qualifying distributions are exempt from the premature distribution penalty (generally applicable to distributions paid prior to 59 ½).</p>

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<p>persons designated by Treasury regulations;</p> <p>(ii) 10% of the participant's vested account balance; or</p> <p>(iii) \$2,500 (indexed for inflation).</p>		
Effective in Years After December 31, 2025:		
<p>Paper Participant Benefit Statement Now Required Annually [§ 338]</p> <p>Except for participants who have elected electronic delivery or for those for whom the plan administrator utilizes the Department of Labor's original electronic delivery regulations (which in most cases involves delivery to the participant's office-based computer), at least one participant benefit statement each plan year must be a paper statement and it must be provided without additional cost. The paper statement must include information on opting out of paper statements and opting to receive one or more paper statements each plan year at no additional cost.</p> <p>Newly eligible participants after December 31, 2025 must also receive a one-time paper notice explaining their ability to elect paper copies of required participant benefit statement before electronic delivery commences.</p>	<p>Mandatory – for plan years beginning after December 31, 2025</p> <p>Not applicable to governmental plans</p>	
<p>Required Minimum Distribution Age for Commencement Increased to Age 75 [§ 107]</p> <p>The age used to determine when required minimum distributions must commence is increased to age 75 – with respect to participants who attain age 74 after December 31, 2032.</p>	<p>Mandatory – for employees attaining age 74 after December 31, 2032</p>	<p>A plan is not required to allow participants to defer distributions until required minimum distributions must commence. For example, a plan may retain the 70 ½, 72, or 73 age limit.</p>

CHANGES AFFECTING SEPs AND SIMPLE PLANS

Provision	Mandatory or Optional/ Effective Date	Comments/Observations/ Related Changes
Effective Retroactively or Upon Enactment (December 29, 2022):		
Qualified Federally Declared Disaster Distributions [§ 331] See explanation for tax-qualified, 403(b), and 457(b) plans above.	Optional – for disasters occurring on or after January 26, 2021	See explanation for tax-qualified, 403(b), and 457(b) plans above.
Repayment Period for Qualified Birth or Adoption Distributions (QBADs) Clarified [§ 311] See explanation for tax-qualified, 403(b), and 457(b) plans above.	Mandatory - effective December 29, 2022	See explanation for tax-qualified, 403(b), and 457(b) plans above.
Reporting of Distributions to Terminally Ill Participants [§ 326] See explanation for tax-qualified, 403(b), and 457(b) plans above.	Mandatory – for distributions made after December 29, 2022	It is unclear whether the IRA custodian must approve the certification or whether the owner must prove the distribution qualifies for relief from the premature distribution penalty.
Effective in First Year After Enactment:		
Required Minimum Distribution Commencement Age Increased to Age 73 [§107] See explanation for tax-qualified, 403(b), and 457(b) plans above.	Mandatory – for participants attaining age 72 after December 31, 2022	See explanation for tax-qualified, 403(b), and 457(b) plans above.
Contributions to SIMPLE Plans and SEPs can be Roth Contributions [§ 601] Contributions to SIMPLE Plans and SEPs can now be made pre-tax or Roth.	Optional – taxable years beginning after December 31, 2022	Presently, all SIMPLE contributions must be pre-tax.
Effective in Years After December 31, 2023:		
Student Loan Repayments May be Treated as Elective Deferrals for Calculating Matching Contributions [§ 110] See explanation for tax-qualified, 403(b), and 457(b) plans above.	Optional – for plan years beginning after December 31, 2023	See explanation for tax-qualified, 403(b), and 457(b) plans above.

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Emergency Expense Withdrawals Permitted [§ 115] See explanation for tax-qualified, 403(b), and 457(b) plans above.	Optional – for distributions made after December 31, 2023	See explanation for tax-qualified, 403(b), and 457(b) plans above.
Additional Nonelective Contributions Permitted in SIMPLE Plans [§ 116] Sponsors of SIMPLE plans and SEPs may make, in addition to the otherwise required employer contributions, an additional employer nonelective contribution. The contribution must be made on behalf of all eligible employees in a uniform manner, subject to a maximum contribution for any employee of the lesser of 10% of compensation or \$5,000 (as indexed for inflation).	Optional – for tax years beginning after December 31, 2023	Presently, employer contributions are limited to a 3% matching contribution or a 2% nonelective contribution.
Increased SIMPLE Plan Contribution Limits [§ 117] The deferral limits for “regular” and catch-up contributions are increased; the new limit depends upon the size of the plan sponsor. For sponsors with 25 or fewer eligible employees, the limits are increased to 110% of the otherwise applicable 2024 limits. For all other sponsors (i.e., sponsors with 26-100 eligible employees), the same increased limits apply only if the employer provides a matching contribution of 4% (rather than 3%) or a nonelective contribution of 3% (rather than 2%).	Optional – for tax years beginning after December 31, 2023	
Mid-Year Replacement of SIMPLE IRA Plan with a Safe Harbor 401(k) or a SIMPLE 401(k) Plan Permitted [§ 332] SIMPLE IRA plans can now be replaced mid-year by a safe harbor	Optional – for plan years beginning after December 31, 2023	Presently, SIMPLE plans cannot be terminated mid-year.

Provision	Mandatory or Optional/ Effective Date	Comments/Observations/ Related Changes
contribution plan or a SIMPLE 401(k) plan, subject to certain conditions. In addition, the restriction on rollovers from SIMPLE IRAs in place for less than two years is waived.		
Effective in Years After December 31, 2024:		
Increased Catch-up Deferral Limit for Older SIMPLE Plan Participants [§ 109] Participants at least 60 but younger than 64 by the end of the calendar year have an increased catch-up deferral limit equal to the greater of \$5,000 or 150% of the 2015 catch-up deferral limit for other SIMPLE plan participants.	Optional – for tax years beginning after December 31, 2024	
Effective in Years After December 31, 2025:		
Required Minimum Distribution Age for Commencement Increased to Age 75 [§ 107] See explanation for tax-qualified, 403(b), and 457(b) plans above.	Mandatory – for employees attaining age 74 after December 31, 2032	

OTHER CHANGES


SECURE 2.0 included a host of other provisions including changes of arguably lesser importance or lesser general interest affecting the plan types discussed above and changes affecting IRAs. Here are the highlights of the “other” key changes:


- The tax credit for small employer plan start-up costs is increased. [§ 102]
- The federal matching contribution (“Saver’s Match”) for certain lower paid employees is increased. [§ 103]
- A new tax credit is available to small employers for certain retirement plan contributions on behalf of participants who are military spouses. [§ 112]
- S Corporation shareholders who sell stock to an employee stock ownership plan (ESOP) after December 31, 2027 may qualify to defer up to 10% of the gain on the sale if qualified replacement securities are acquired and the ESOP owns 30% of the corporation after the transaction (among other requirements). [§ 114]

- The definition of “publicly traded securities” for ESOPs is expanded to include certain non-exchange traded securities. [§ 123]
- The required minimum distribution rules are modified in limited circumstances to facilitate the payment of benefits in life annuities and “qualified longevity annuity contracts.” [§§ 201 & 202]
- Amounts paid under an annuity in connection with a partial annuitization of the benefit can be considered for purposes of calculating the required minimum distribution for the participant. [§ 204]
- In the first year of a 401(k) plan for a sole proprietor or a single member LLC without any employees, elective deferrals can be contributed up to the due date of the tax return (without extensions) for the proprietor’s or member’s tax year that end with or after the last day of the plan year. [§ 317]
- The statute of limitations for assessment of the excise tax for failure to receive required minimum distributions from an IRA is shortened to 3 years if IRA owner files an individual income tax return for that year (if a return is required for that year). With respect to excess contributions to an IRA, the statute of limitations on assessment of the excise tax is limited to 6 years if the owner files an individual income tax return for that year (if a return is required for that year). [§ 313]
- Distributions from an IRA of excess contributions (and associated earnings) are exempt from the penalty for distribution before age 59 ½. [§ 333]
- A prohibited transaction involving an IRA only disqualifies that IRA of the owner, not other IRAs of the same owner with respect to which a prohibited transaction has not occurred. [§ 322]

In addition to these changes, numerous federal agencies with responsibility over retirement plans have been tasked with issuing specific guidance or conducting studies and reporting back to Congress:

- Department of Labor
 - Must create a “lost and found” for retirement benefits of participants who cannot be located. [§ 303]
 - Must promulgate benchmarks fiduciaries can use to evaluate asset allocation funds, such as target retirement or balanced funds. [§ 318]
 - Must provide recommendations to Congress on improving fee disclosures and consumer education with respect to retirement plan fees and expenses. [§ 340]
 - Must establish a program to promote employee stock ownership. Included in those provisions is a requirement to develop “acceptable standards and procedures to establish good faith fair market value for shares of a business to be acquired by an employee stock ownership plan.” This latter provision will fill a nearly 35-year regulatory gap. [§ 346]
- Internal Revenue Service
 - Must update the Employee Plans Compliance Resolution System (EPCRS)[which contains the IRS procedures to voluntarily correct plan administrative and document failures] to expand the use of self-correction methodology for inadvertent errors, loan failures, and corrections by IRA custodians. [§ 305]
 - Must promulgate “template” forms participants can use for rollovers to and from retirement plans. [§ 324]

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- Department of Labor and Internal Revenue Service
 - Must review the reporting and disclosure obligations for retirement plans and report back to Congress with recommendations how to consolidate, simplify, standardize, and improve those obligations. [§ 319]
 - Must issue regulations permitting the consolidation of retirement plan disclosures for default investments, 401(k) safe harbor plans, and automatic enrollment provisions. [§ 341]
 - Must study the impact of inflation on retirement savings and report to Congress. [§ 347]
 - General Accountability Office
 - Must review the current model general explanation of the tax consequences of retirement plan distributions provided to participants prior to a distribution and report to Congress as to the effectiveness of those disclosures and recommend improvements. [§ 336]



CONCLUDING THOUGHTS AND PLAN SPONSOR AND ADMINISTRATOR ACTION ITEMS

Plan sponsors will need to consider which of the optional provisions will be adopted as part of its retirement plan. Sponsors and plan administrators will also want to talk with their TPAs and recordkeepers about administrative changes needed to implement the desired changes and how to best communicate those changes to participants. Some recordkeepers may be reluctant to distribute an updated summary plan description before the plan is amended (which may be some years hence)— so a discussion of the method of apprising participants of the changes as they are made will be needed.

Plan sponsors and administrators will want to monitor the IRS and Department of Labor for further guidance on these provisions. Given the complexity and breadth of the changes made, ambiguities and inadvertent errors are likely. Several errors have already been identified and more will come to light as practitioners and plan advisors further study the Act. For many of the new optional provisions, plan sponsors would be wise to defer implementation of the changes until further agency guidance is provided.

With the new distinctions SECURE 2.0 makes between participants, the heaviest burden of these changes will fall on plan recordkeepers, whose systems will require major overhaul to assure they properly reflect these distinctions and the detailed special rules that apply to each. Couple that with the integration needed with payroll systems and you have a tall task indeed notwithstanding the delayed effective dates for many of these provisions.

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