

# Is Your Retirement Plan *Really* SECURE?


## Obligations and Opportunities for Employers Under SECURE 2.0

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## Presenters



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## The Legal and Administrative Stuff

- This presentation is not legal advice
- Information presented as of February 7, 2023
- Laws, regulations, and guidance continuously evolving
- Will try to field questions as we go; submit them in Chat or Q&A
- Presentation materials will be emailed within a few days

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## Agenda

- Background – The SECURE 2.0 Act of 2022
- Overview of Key SECURE 2.0 Changes
- Amendment Deadlines
- Action Steps and Recommendations
- Summary Chart

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## Background and Overview

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## How Did We Get Here?

- Bipartisan legislation included as Division T of Consolidated Appropriations Act, 2023 (signed December 29, 2022)
- Follow up to the Setting Every Community Up for Retirement Enhancement (“SECURE”) Act passed December 20, 2019
- Intended to:
  - Modernize retirement system
  - Encourage retirement savings
  - Ease administrative burdens

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## How Did We Get Here?

- Comprehensive reform affecting nearly all employers and plans
- Some provisions effective upon enactment or for 2023 plan years
- Both optional and required changes affecting plan documents and plan administration
- This is an overview of some of the most significant provisions

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## Key Early-Action Issues

- “Rothification” of employer contributions (optional)
- RMD changes (required)
- Participation incentives (optional)
- Hardship withdrawals (optional)
- Participant notice relief (optional)
- Catch-up contribution changes (required)

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## Key Early-Action Issues

- Involuntary cash-out threshold (optional)
- Enhanced in-service withdrawal opportunities (optional)
- Student loan matching contributions (optional)
- Error correction relief (optional)
- Amendments generally not *required* until end of 2025 plan year (2027 for governmental plans), but implementation decisions must be made and notices must be updated sooner

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## Substantive Changes

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## Roth Treatment of Matching and Profit-Sharing Contributions

- Plans may permit participants to elect Roth treatment of employer matching and nonelective contributions
- Contributions are included in participant's gross income
- Must be treated as fully vested at time contributed

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## Roth Treatment of Matching and Profit-Sharing Contributions

- **Compliance Issues**
  - Effective immediately upon enactment (*i.e.*, now)
  - Applies to 401(k), 403(b), and governmental 457(b) plans
  - Optional provision
  - Recordkeepers may not be ready to implement
  - Plan amendments and notices required (if adopted)
  - Payroll withholding and income tax treatment of contributions unclear

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## Required Minimum Distribution Rules

- **Increase in Required Beginning Date from Age 72 to Age 75**
  - SECURE Act (1.0) increased age from 70 ½ to 72
  - SECURE 2.0 – further, phased increase to age 75 by 2033
    - **Age 73** for participants who turn:
      - 72 after 12/31/2022, and
      - 73 before 1/1/2033
    - **Age 75** for participants who turn:
      - 74 after 12/31/2032
  - Effective for distributions after 12/31/2022, for participants turning 72 after that date
  - Applies to all plans (DB and DC)
  - Required change
  - Note drafting error for participants born in 1959 (technical correction expected)

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## Required Minimum Distribution Rules

- **Roth Account RMD Rules**
  - Aligns RMD rules for Roth accounts in DC plans with Roth IRA rules
  - Roth accounts in employer plans no longer subject to pre-death RMD rules
  - Required change
  - Effective for tax years beginning on or after 1/1/2024
- **Surviving Spouse RMD Election**
  - Allows surviving spouse to elect to be treated as deceased employee for RMDs
  - Required change
  - Effective 1/1/2024
- **Reduction in Excise Tax for RMD Failures**
  - Reduces excise tax for failure to take RMD from 50% to 25%
  - Tax further reduced to 10% if failure corrected within specified window
  - Effective immediately

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## Required Minimum Distribution Rules

- **Compliance Issues**
  - RMD changes generally mandatory
  - Affect DC and DB plans
  - Recordkeepers will administer, but fiduciaries should verify RK awareness and monitor compliance
  - Notices and forms (e.g., Special Tax Notice, rollover forms) must be updated long before amendment deadline

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## De Minimis Contribution Incentives

- Allows plan sponsors to give *de minimis* financial incentives (e.g., gift cards) to employees as incentive for making contributions
  - “*De minimis*” is not defined
  - Cannot be funded with plan assets
  - Cash (or gift cards) is still always taxable
- Exception to Tax Code’s contingent benefit rule
- Applies to 401(k) and 403(b) plans
- Optional provision
- Effective for plan years beginning after 12/29/22

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## Hardship Withdrawals

- Plans may rely on participant self-certification regarding amount required to satisfy need and absence of alternative means to satisfy need
- Adds to current self-certification of existence of hardship
- Self-certification not allowed if administrator has contrary actual knowledge
- Applies to 401(k), 403(b), and 457(b) plans (unforeseeable emergency)
- Optional provision
- Effective for plan years beginning after 12/29/22

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## Notice to Unenrolled Employees

- Employers no longer required to issue ERISA and Code notices to unenrolled participants
  - “Unenrolled” means employee is not participating and has no account balance in plan
- Must still provide annual notice of participant’s eligibility and identify applicable deadlines
- Must still provide any document requested by participant
- Applies to defined contribution plans
- Optional provision
- Effective for plan years beginning on/after 1/1/23

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## Catch-Up Contributions

- **Roth-Only Catch-Ups for High Earners**
  - Catch-up contributions must be characterized as Roth (*i.e.*, after-tax) for highly paid participants
  - “Highly paid” = prior year wages exceeding \$145,000 (indexed after 2024)
  - If *any* participant is limited to Roth catch-ups other participants must be given option to make Roth catch-ups
  - Applies to 401(k), 403(b), governmental 457(b) plans
  - Required provision (if regular catch-ups offered)
  - Effective for tax years beginning on/after 1/1/24

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## Catch-Up Contributions

- **Higher Catch-Up Limits for Participants Age 60+**
  - Current: Participants age 50+ = \$7,500 (for 2023)
  - 2025: Participants age 60-63 = Greater of:
    - \$10,000, or
    - 150% of “regular” catch-up limit
  - Both amounts will be indexed after 2025
  - Different amounts apply to SIMPLE plans
  - Optional provision
  - Effective for tax years beginning on/after 1/1/2025

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## Cash-Out Limit Increase

- The involuntary cash-out limit may be increased from \$5,000 to \$7,000 for distributions from defined contribution or defined benefit plans
- Plans may involuntarily cash out former participants whose plan account balance is at least \$1,000 and no more than \$7,000
- Rollover to IRA required for amounts greater than \$1,000 (absent a participant election to the contrary)

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## Cash-Out Limit Increase

- **Compliance Notes**
  - Increasing the cash-out limit is optional
  - Applicable to defined benefit *and* defined contribution plans
  - Effective for distributions made on/after January 1, 2024
  - Administrators must issue updated notices *prior to cash-out* at higher amount
  - Administrative Services agreement impact
  - Important to administer plan and timely adopt amendment

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## Enhanced In-Service Withdrawal Options

- Adding in-service and emergency withdrawal options seen as key to increasing participation and savings rates
- SECURE 2.0 expands ability of participants to access DC accounts for:
  - Terminal illnesses
  - Federally declared disasters
  - Domestic abuse
  - Long-term care
  - Emergency expenses
  - In-plan emergency savings accounts
- Must modify Special Tax Notice

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## Enhanced In-Service Withdrawal Options

- **Terminal Illness Withdrawals**
  - SECURE 2.0 eliminates 10% penalty for distributions to terminally ill participants
  - Participant must furnish “sufficient evidence” of terminal illness to administrator
  - Physician must certify participant has condition reasonably expected to result in death within 84 months
  - Statute does not limit amount of withdrawal or number of distributions
  - Distributions may be repaid within 3 years
  - Optional provision
  - Effective for distributions after December 29, 2022

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## Enhanced In-Service Withdrawal Options

- **Disaster Relief Distributions**

- Available to participants affected by federally declared disasters
- Distributions up to \$22,000 per disaster, income tax smoothing over 3 years,
- No 10% penalty
- Option to repay within 3 years
- Plans may also increase maximum loan to \$100,000/100% of vested account for affected participants
- Optional provision
- Effective for disasters declared on/after January 26, 2021

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## Enhanced In-Service Withdrawal Options

- **Domestic Abuse Victim Withdrawals**

- Available for plans that are not subject to QJSA rules
- Victims of domestic abuse by spouse or domestic partner eligible
- Distributions cannot exceed *lesser* of \$10,000 (indexed) or 50% of vested benefit
- Administrator can rely on participant's self-certification of eligibility
- No 10% penalty
- Participants have option to repay within 3 years
- Optional provision
- Effective for distributions made after December 31, 2023

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## Enhanced In-Service Withdrawal Options

- **Long-Term Care Distributions**

- Plans may permit in-service withdrawal under a DC plan for certain long-term care premium payments
- Up to \$2,500 per year (or 10% of vested account, if less)
- No 10% penalty
- Optional provision
- Effective for plan years beginning on/after January 1, 2026

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## Enhanced In-Service Withdrawal Options

- **Emergency Expenses**

- Allows in-service withdrawals up to \$1,000 for personal/family emergency expenses that are unforeseeable or create immediate financial need
- Limited to one distribution per calendar year
- No 10% penalty
- Participant may self-certify eligibility
- Participant may repay within 3 years
- Additional emergency distributions prohibited during 3-year repayment period
- Optional provision
- Effective for distributions after December 31, 2023

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## Enhanced In-Service Withdrawal Options

- **In-Plan Emergency Savings Account Distributions**
  - Optional provision for non-HCEs in 401(k), 403(b) and governmental 457(b) plans
  - Independent of penalty-free emergency withdrawal provision
  - Employee contributions must be made as Roth (after-tax) contributions
  - Auto-enrollment allowed, up to 3% of pay
  - Account cannot exceed \$2,500 (indexed) or lower limit set by sponsor
  - Contributions must be invested in interest-bearing deposit or similar account
  - Contributions treated as elective deferrals for matching purposes and contribution limits
  - Plan may impose restrictions to avoid abuse by participants to get match (*i.e.*, round-trip limits)
  - Participants may take at least one withdrawal per month (no 10% penalty)
  - Effective for plan years beginning on/after January 1, 2024

## Student Loan Matching Contributions

- Employers may treat “qualified student loan payments” as elective deferrals for matching contribution purposes
- Exception to the Code’s contingent benefit rule
- Long-sought tax-favored incentive for employees with student loan debt to save for retirement through employer-sponsored plans
- Previous IRS guidance (Private Letter Ruling--Abbott Labs) was limited and unworkable

## Student Loan Matching Contributions

- **Restrictions:**
  - Student loan debt must be for higher education expenses of employee, spouse, or dependent
  - Participant must certify loan payments at least annually
  - Match rate, eligibility, and vesting must be same as match on elective deferrals
  - Plan may apply ADP test separately to employees who receive student loan match
  - Loan repayments count towards annual deferral limit under Code § 402(g) but not to annual additions limit under § 415(c)

## Student Loan Matching Contributions

- **Compliance Strategies**
  - Optional provision for 401(k), 403(b), governmental 457(b), and SIMPLE plans
  - Effective for plan years beginning on/after January 1, 2024
  - Allows contributions to be treated as matching, and not nonelective
  - Treasury will issue regulations and model plan amendments
  - Student loan matching contributions may be made at a different frequency than the regular match, but must be made *at least annually*
  - Sponsors may establish procedures for participants to claim the match



## Changes to Employee Plans Compliance Resolution System (EPCRS)

- SECURE 2.0 expands the availability of self-correction through EPCRS to include any “eligible inadvertent failure” and certain plan loan failures
- No specific deadline for self-correcting errors, so long as correction occurs within a reasonable time after discovery of errors
- Allows self-correction of certain errors that are identified while under IRS examination
- Expands self-correction to include SEPs and SIMPLE IRAs

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## Changes to Employee Plans Compliance Resolution System (EPCRS)

- Certain plan loan errors may be self-corrected under SCP procedures—  
e.g. exceeding loan amount limits, use of an improper repayment schedule.
  - DOL relief—deemed satisfaction of VFCP Program requirements
  - Form 1099-R filing relief
- IRS is directed to issue new EPCRS regulations implementing SECURE 2.0 changes
- These changes to EPCRS are effective immediately

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## Amendments and Action Steps

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## SECURE Act 2.0 Amendment Deadlines

- Generally, plans must be amended by the last day of first plan year beginning on/after January 1, 2025
- For governmental and collectively bargained plans, last day of first plan year beginning on/after January 1, 2027
- Must administer plan in accordance with required and any optional changes adopted in interim
- Earlier coordination with record keepers, guidelines, and communication to participants

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## Action Steps for Employers

- Understand SECURE 2.0 and the options it makes available
- Be prepared to react to record keeper push-outs
- Verify that record keepers are implementing currently required changes (RMDs, recovery of overpayments)
- Adopt optional provisions that benefit your workforce

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## Action Steps for Employers

- Coordinate elections and administrative practices with record keepers
  - Document election and implementation of optional provisions
  - System setup
  - Participant touchpoints (e.g., paperwork, forms, websites, and communications)
  - Notices (i.e., SPDs and Special Tax Notice)
- Watch for additional guidance
- Adopt plan amendments

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## Thank You!

Please contact us for help



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## SECURE 2.0 Summary Chart

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## SECURE 2.0 Summary

SECURE 2.0 Provision	Optional/Required	Effective Date
Reduction in Excise Tax for RMD Failures	N/A	Immediate
Small Incentives for Participation	Optional	Immediate
457(b) 1 <sup>st</sup> -Day Rule	Optional	Immediate
Qualified Birth/Adoption Repayment	Optional	Immediate

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## SECURE 2.0 Summary

SECURE 2.0 Provision	Optional/Required	Effective Date
Terminal Illness W/Ds	Optional	Immediate
Hardship Self-Certification	Optional	Immediate
Federal Disaster Distributions	Optional	Immediate
Roth Treatment of Match or Non-Elective Contributions	Optional	Immediate

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## SECURE 2.0 Summary

SECURE 2.0 Provision	Required/Optional	Effective Date
Recovery of Overpayments	Required	Immediate
EPCRS Expansion	N/A	Immediate
Increased RMD Age	Required	Plan Years On/After 1/1/23
Notices to Unenrolled Ees	Optional	Plan Years On/After 1/1/23
403(b) MEPs	Optional	Plan Years On/After 1/1/23

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## SECURE 2.0 Summary

SECURE 2.0 Provision	Required/Optional	Effective Date
Safe Harbor Correction for Elective Deferral Errors	Optional	Plan Years On/After 1/1/24
Student Loan Match	Optional	Plan Years On/After 1/1/24
Catch-Ups Treated as Roth for High Earners	Required	Plan Years On/After 1/1/24
In-Service W/D and Emergency Savings A/Cs	Optional	Plan Years On/After 1/1/24

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## SECURE 2.0 Summary

SECURE 2.0 Provision	Optional/Required	Effective Date
Cash-Out Limit Increase	Optional	Plan Years On/After 1/1/24
Plan Amendments to Increase Benefits	Optional	Plan Years On/After 1/1/24
Surviving Spouse RMD Election	Required	Plan Years On/After 1/1/24
403(b) Hardship W/Ds	Optional	Plan Years On/After 1/1/24

## SECURE 2.0 Summary

SECURE 2.0 Provision	Optional/Required	Effective Date
Roth RMD Rules	Required	Plan Years On/After 1/1/24
Mandatory Auto-Enrollment for New Plans	Required	Plan Years On/After 1/1/25
Higher Catch-Up Limit	Optional	Plan Years On/After 1/1/25
Long-Term Part-Time Eee Eligibility	Required	Plan Years On/After 1/1/25

## SECURE 2.0 Summary

SECURE 2.0 Provision	Optional/Required	Effective Date
Long-Term Care Distributions	Optional	Plan Years On/After 1/1/26
Paper Statements	Required	Plan Years On/After 1/1/26