Is Your Retirement Plan *Really* SECURE?

Obligations and Opportunities for Employers Under SECURE 2.0

February 7, 2023

년 SpencerFane

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

Agenda

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Presenters

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- 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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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 - Modernize retirement system - Encourage retirement savings - Ease administrative burdens D SpencerFane

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

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)

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 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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- 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

Roth Treatment of Matching and Profit-Sharing Contributions

Compliance Issues

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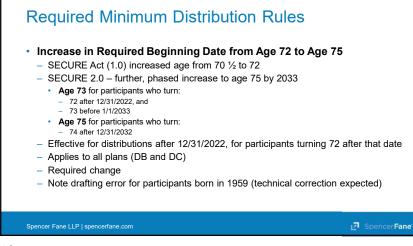
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- Effective immediately upon enactment (*i.e.*, now)

Substantive Changes

- 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

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

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

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Effective for plan years beginning after 12/29/22

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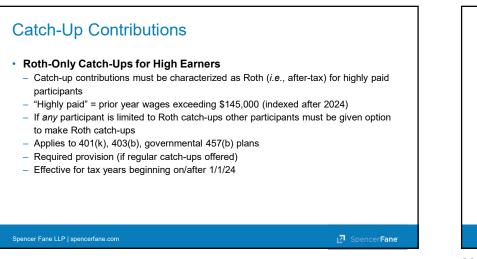
Hardship Withdrawals

- 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

- 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 Cash-Out Limit Increase • The involuntary cash-out limit may be increased from \$5,000 to \$7,000 for Compliance Notes distributions from defined contribution or defined benefit plans - Increasing the cash-out limit is optional - Applicable to defined benefit and defined contribution plans • Plans may involuntarily cash out former participants whose plan account Effective for distributions made on/after January 1, 2024 _ balance is at least \$1,000 and no more than \$7,000 - Administrators must issue updated notices prior to cash-out at higher amount - Administrative Services agreement impact Rollover to IRA required for amounts greater than \$1,000 (absent a - Important to administer plan and timely adopt amendment participant election to the contrary) Spencer Fane LLP | spencerfane.com D SpencerFane Spencer Fane LLP | spencerfane.com D SpencerFane 22 21

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

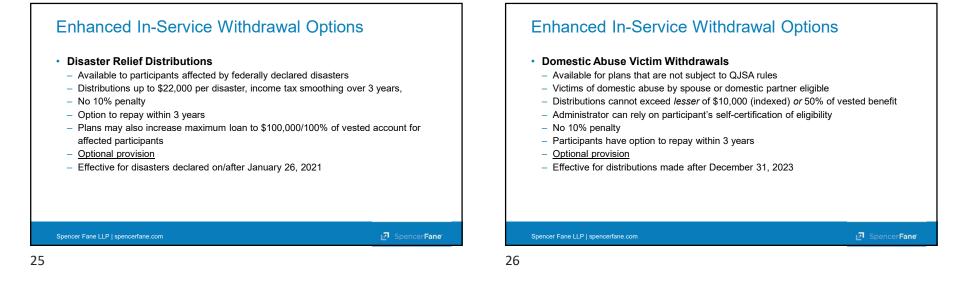
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Enhanced In-Service Withdrawal Options

- 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

- 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

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

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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

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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

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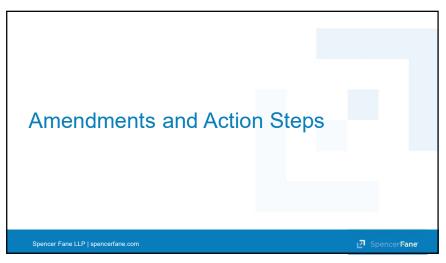
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Changes to Employee Plans Compliance Resolution System (EPCRS)

- 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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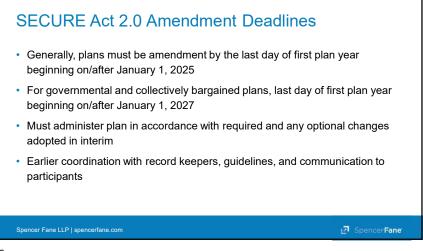
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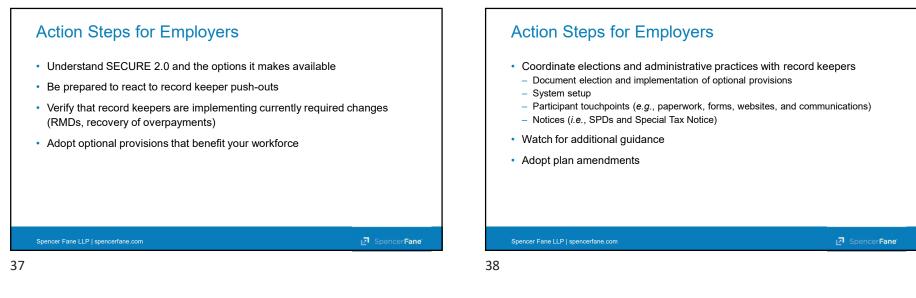


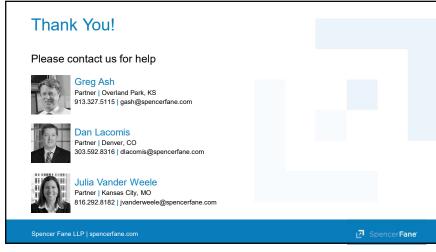
Changes to Employee Plans Compliance Resolution System (EPCRS)

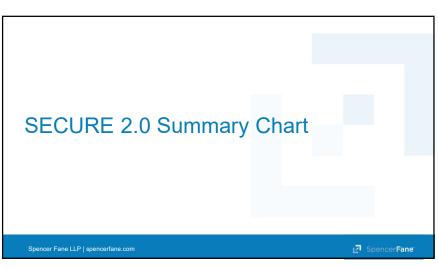
- Certain plan loan errors may be self-corrected under SCP procedures e.g. exceeding loan amount limits, use of an improper repayment schedule.
 - DOL relief-deemed satisfaction of VFCP Program requirements
- Form 1099-R filing relief
- IRS is directed to issue new EPCRS regulations implementing SECURE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

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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 st -Day Rule	Optional	Immediate
Qualified Birth/Adoption Repayment	Optional	Immediate

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 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

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 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
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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
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SECURE 2.0 St	ummary	
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
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