

SECURE 2.0 SUMMARY OF SELECT PROVISIONS

Congress passed the Consolidated Appropriations Act of 2023 in late December 2022. A number of legislative initiatives were attached to the omnibus funding package, including the retirement reform measures commonly referred to as SECURE 2.0. There were over 90 provisions included in SECURE 2.0 which was enacted on December 29, 2022. This summary is intended to share the provisions that most affect DC and DB plans.

Effective on Enactment Date of December 29, 2022 or for Plan Years Beginning After December 29, 2022

Change to Age for Required Minimum Distributions (RMD) (Sec 107)

- The required beginning date for Required Minimum Distributions (RMDs) has been increased to age 73 for individuals who attain age 72 after December 31, 2022.
- For example, Sue turns age 72 on August 17, 2023. Her first distribution year will be 2024, when Sue attains age 73. Her RMD may be distributed by December 31, 2024 or delayed to no later than April 1, 2025. If she delays it until April 1, 2025, she will have two RMDs to withdraw in 2025 as the 2025 RMD must be distributed by December 31, 2025.
- Another example, Bob turns age 73 on June 15, 2023. His first distribution year will be 2023, when he attains age 73. His RMD may be distributed by December 31, 2023 or delayed to no later than April 1, 2024. If he delays it until April 1, 2024, he will have two RMDs to withdraw in 2024.

Reduced RMD Penalties (Sec 302)

- Penalties for failure to take RMDs in a timely manner is decreased from 50% to 25% and decreased even further to 10% if the failure is corrected before the correction window ends. Correction window is two years after the year the RMD should have been taken unless the IRS issues deficiency notice sooner.

Sole Proprietor 401(k) Deferrals (Sec 317)

- New law allows an unincorporated sole proprietor with no employees to make a deferral election contribution up to the date of the tax return for the first year of the plan. The deferral is made after the end of the tax year, but by the filing deadline, and is treated as having been made before the end of the first plan year.
- This provision is not applicable for Partnerships.

Small Deferral Incentives for Contribution (Sec 113)

- Employers may offer de minimis financial incentives, not paid from plan assets, to boost employee participation in the plan. Example: low dollar gift cards or promotional items.

Roth Tax Treatment for Employer Contributions (Sec 604) - OPTIONAL

- Plans are permitted, but not required, to allow participants the option to receive employer matching or nonelective contributions on a Roth basis, providing that the employer contributions are vested when made.
- Matching or nonelective contributions designated as Roth contributions are not excludable from income. More guidance is needed although this is allowed as of the enactment date of December 29, 2022.

Hardship Withdrawal Self-Certification (Sec 312) – OPTIONAL

- The plan administrator of a 401(k), 403(b) or 457(b) may rely on the employee's self-certification that the distribution is because of an eligible hardship for one of the safe harbor reasons, that the amount does not exceed amount of need, and employee does not have any other reasonably available resources.

No Penalty for Individuals with Terminal Illness (Sec 326) - OPTIONAL

- Distributions to a terminally ill individual will be exempt from the 10% early distribution penalty. Individual must be entitled to an in-service or termination of employment distribution.
- Distributions are permitted on or after a doctor has certified an employee has a terminal illness that is reasonably expected to result in death within 7 years.
- Repayment is allowed within 3 years (similar to QBADs).

Qualified Birth and Adoption Distribution (QBAD) Repayments (Sec 311) - OPTIONAL

- If a plan does permit QBAD distributions, recipients can repay the distribution to the plan or an IRA. Distributions taken under SECURE rules, which did not specify the time frame for repayment, must now be repaid before January 1, 2026, if the participant opts to repay it.
- SECURE 2.0 limits repayments to 3 years, beginning on the day after the distribution is received for distributions made after 12/29/2022.

Expansion of Employee Plans Compliance Resolution System (EPCRS) (Sec 305)

- SECURE 2.0 directs changes to EPCRS to reflect that eligible inadvertent failures can now be corrected without having to determine whether they are significant or insignificant.
- The provision is also without a time limitation providing correction is completed "within a reasonable period" after the failure is identified and providing the IRS does not discover the failure before action to correct the failure has begun.

EPCRS Recovery of Overpayments (Sec 301)

- Section 301 makes permanent the rules regarding recovery of inadvertent overpayments from plans. Plan fiduciaries will generally not be required to recoup mistaken overpayments to a participant. If a fiduciary chooses to seek repayment, certain limitations and restrictions apply.
- It does not allow the employer to reduce future funding payments to recoup overpayments.

Modification of Start-up Credit for Small Employers (Sec 102 and Sec 111)

- This provision increases the 3-year small business start-up credit from 50% to 100% of administrative costs up to an annual cap of \$5,000. Employers with 50 or fewer employees are eligible. DC and DB plans are eligible for this credit. The credit for employers with 51-100 employees remains unchanged at 50% of administrative costs.
- DC start-up plans are also eligible for a new tax credit for employer contributions. The amount of the credit will generally be a percentage of the amount contributed by the employer on behalf of employees up to a per-employee cap of \$1,000. There is no credit for an employee in prior year whose FICA wages exceeded \$100,000 (indexed).
- Employers with 51-100 employees have a phased-out credit. The credit starts as 100% of contributions (as limited to \$1,000) in years 1 and 2, lowers for the next 3 years and phases out after year 5.
- Note that Sec 111 clarifies that the start-up credit is available if an employer is adopting its first plan by joining an existing MEP. Section 111 is retroactive for plan years beginning after 12/31/2019.

Permanent Disaster Relief (Sec 331) effective for disasters occurring on or after January 26, 2021

- Provides permanent rules for qualified disasters where distributions are limited to \$22,000 per disaster (down from \$100,000). The distribution request must be submitted within 180 days after the disaster. There is no 10% early distribution penalty and the tax on the withdrawal may be spread over 3 years.
- The amount may be repaid, but is not required, in 3-year period (similar to QBADS).
- Additional rules for unused first-time home buyer withdrawals.
- Loan terms can be modified to increase the maximum loan amount (up to \$100,000), use the participant's full vested account balance as collateral, and loan repayments can be suspended for up to one year.

Notices to Unenrolled Participants (Sec 320)

- Eliminates the need to provide notices and disclosures (both IRS and DOL) to unenrolled participants. This includes QDIA and SH notices. Employee must have received the SPD and notice of initial eligibility and then receive just an annual reminder notice that notifies the participant of their eligibility to participate and key benefits and rights under the plan.

403(b) Plans Maintained as a MEP or PEP (Sec 106)

- A 403(b) plan is now permitted to be maintained as a multiple employer plan (MEP) or pooled employer plan (PEP).

Defined Benefit Changes at Enactment or January 1, 2023:

- At enactment, the PBGC variable rate premium is now a flat \$52 for each \$1000 of unfunded vested benefits. The deadline that allows overfunded plans to provide retiree health benefits has been extended from 2025 until 2032. As of 1/1/2023, a CB plan with variable interest crediting rates cannot use rates above 6% to prevent backloading of benefit accruals.

Effective January 1, 2024

Force-out Limit Increase (Sec 304)

- The force-out amount is increased from \$5,000 to \$7,000 for distributions made after 12/31/2023.

Personal Emergency Withdrawal (Sec 115) - OPTIONAL

- A new distributable event, not a hardship, is allowed for an unforeseeable or immediate financial need relating to necessary personal or family emergency expenses.
- Permissible per year of up to \$1,000 (or if the account is less than \$2,000, the amount that exceeds \$1,000) with the OPTION to repay the distribution within 3 years.
- Distribution does not have to follow one of the six hardship rules; could be to purchase tires. No further emergency distribution is allowed during the 3-year repayment period unless retribution occurs.
- Exemption from the 10% early withdrawal penalty. The plan sponsor may rely on participant's self-certification unless the plan sponsor has reason to believe otherwise.

Domestic Abuse Withdrawal (Sec 314) - OPTIONAL

- Domestic abuse victims may withdraw the lesser of \$10,000 (indexed) or 50% of their vested account. No 10% early distribution penalty but is a distributable event. Employee self-certifies eligibility for the withdrawal.
- The amount can be repaid to the plan within 3 years (similar to QBADs).

Long-Term Part-Time Employee Changes (Sec 125)

- The 3-year LTPT rule is reduced to 2 years (employees working 500+ hours in 2 consecutive years must be eligible to defer). Years before 2021 are disregarded for 401(k) vesting. LTPT rules are also extended to 403(b) plans as of 1/1/2024.
- 2-year rule will apply to ERISA 403(b) plans.
- Employers should be tracking hours.

Employee Works 500+ Hours Each Year	Consecutive Years	Entry Date
Hours tracked for 2021, 2022 and 2023	3 years (2021-2023)	2024
Hours tracked for 2023 and 2024	2 years (2023-2024)	2025

Family Attribution Rule Fix (Sec 315)

- Disregards community property ownership between spouses. Allows couples in community property states to use non-involvement exception in controlled group determinations.
- This change prevents parent-child attribution from creating controlled groups between businesses owned separately by spouses.
- It's important to note that if spouses have been sponsoring a joint plan because of this rule, that the plan will now become a MEP since they are no longer a controlled group.

Roth Excluded from Pre-Death RMD Calculation (Sec 325)

- RMDs will no longer be required from Roth accounts. The RMD calculation will not include the Roth balance for distribution calendar years after 2023.

Surviving Spouse RMD Election (Sec 327) - OPTIONAL

- This election permits a surviving spouse beneficiary to be treated as the deceased employee for purposes of age in applying the RMD rules.

Catch-ups Must be Roth (Sec 603)

- Catch-up contributions for participants whose prior calendar year FICA wages exceed \$145,000 (indexed) must be made as Roth contributions. If a plan does not offer Roth, the plan cannot accept catch-ups. Applies to both 401(k) and 403(b) plans but not to SARSEP or SIMPLE IRAs.

EPCRS Safe Harbor Correction of Elective Deferral Failures (Sec 350)

- Section 350 creates permanent rules to allow employers to self-correct inadvertent automatic enrollment or automatic increase errors within 9 ½ months after the end of the year in which the error occurs without making up missed deferrals.
- The employer must still give actively employed participants the 45-day notice to qualify for the safe harbor 0% QNEC amount.
- The provision eliminates QNECs for terminated employees and permits self-correction even if first discovered by the IRS.

New Starter 401(k) (Sec 121)

- Employers may adopt a deferral only 401(k) plan (or safe harbor 403(b) plan) with no ADP and no top-heavy testing.
- Must apply to all eligible employees who satisfy minimum age and service but can exclude union and nonresident alien and those that can be excluded by statute.
- Requires automatic enrollment at rate of 3% to 15% (uniform). Deferral limit is the same as IRA contribution limits with catch-up allowed. No employer contributions permitted.
- Employer can't have another qualified plan that year. Seen as an alternative to state mandates.

Mid-Year SIMPLE IRA Conversion to Safe Harbor 401(k) (Sec 332)

- Employers will be permitted to convert from a SIMPLE IRA to a Safe Harbor 401(k) mid-year. The new plan must be a Safe Harbor 401(k) (not known what type of SH yet).
- If the employer terminates the SIMPLE IRA and establishes a 401(k), employees can now roll their SIMPLE IRA account into the plan without waiting for two years of participation.
- Deferral limit is prorated between SIMPLE and 401(k).

Top Heavy Modification (Sec 310)

- Employees who do not meet the minimum age and service requirements under the Code (under age 21 and less than 1 Year of Service) may be ignored in determining whether the plan satisfies top-heavy minimum contributions. It is now permitted to test non-excludable and excludable employees separately. This aligns with coverage and non-discrimination testing rules already in effect.

Emergency Savings Accounts (ESAs) (Sec 127) - OPTIONAL

- Plans MAY set up pension-linked ESAs for Non-highly Compensated Employees (NHCEs) and may automatically opt employees into the account at no more than 3% of salary. Contributions are made as Roth deferrals and are treated as elective deferrals for any matching contributions. Account is capped at \$2,500 (indexed). Once the cap is reached, contributions may be stopped or continue as Roth deferrals.
- Withdrawals are allowed at least once per month, with no fees allowed on the first four withdrawals. Withdrawals are treated as tax-free qualified Roth distributions and no 10% premature distribution penalty applies. The participant self-certifies the request.
- Other requirements include specific conservative investments, annual disclosure, separate source tracking.
- Employer can terminate the arrangement at any time. No anti-cutback right.

Treatment of Student Loan Payments as Elective Deferrals for Purposes of Matching Contributions (Sec 110) - OPTIONAL

- Section 110 applies to 401(k), 403(b), governmental 457(b) and SIMPLE IRAs.
- Plan sponsor may elect, but is NOT required, to provide matching contributions on “qualified student loan payments”.
- Broad definition of qualified student loan payment: payment to pay higher education expenses, must be carrying at least half-time full student loan, the employee certifies amount of loan payments annually, and employer may rely on employee certification.
- If the plan matches student loan payments, it must do so at the same rate as a match on elective deferrals and the match related to the loan must vest in the same manner as a match on deferrals.
- Different rules for testing purposes.

403(b) Plan Hardship Withdrawal Rules (Sec 602)

- Under current law, hardship distribution rules have been varied for 401(k) and 403(b) plans. Section 602 changes the 403(b) rules to conform with the 401(k) rules.

DB Plan Changes effective January 1, 2024:

- Annual funding notices have changes to content requirements to identify funding issues more clearly. IRS must update funding mortality tables.

Effective January 1, 2025

Automatic Enrollment Mandate for 401(k) and 403(b) Plans (Sec 101)

- Effective for plan years beginning after December 31, 2024, and for any plan established after date of enactment (December 29, 2022).
- Initial deferral percentage in first year is at least 3%, not to exceed 10%.
- Automatic increase of 1% annually until rate reaches at least 10%, but not to exceed 15%.
- Exemptions to the automatic enrollment are for: plans established before 12/29/2022, small employer (10 or fewer employees), new business (3 years or less), SIMPLE 401(k), and churches/governmental employers.
- Contributions must be invested in a Qualified Default Investment Alternative (QDIA).
- Participants may elect to opt out and/or request a refund of contributions subject to the 90-day withdrawal rule.
- Existing plans are grandfathered.
- MEPs/PEPS each employer is treated as a separate entity. For example, a MEP is established in 2021 and XYZ employer joins the MEP in 2023. XYZ is subject to the auto enroll provisions in 2025.

Increase in Catch-up Contribution Limits at Certain Ages (Sec 109)

- Raises catch-up contribution to the greater of \$10,000 or 150% of the regular 2024 catch-up limit for years in which the participant turns age 60, 61, 62, or 63. Indexed after 2025.

2025 AMENDMENT DEADLINE (Sec 501):

- No operational failure if amended by the last day of the plan year beginning on or after 1/1/2025. Amendment must be retroactively effective (operate now and amend later to conform to what you've done and implemented). Anti-cutback relief is also available. This deadline also applies to amendments for SECURE 1.0, CARES, and Taxpayer Certainty and Disaster Tax Relief Act of 2020.

Looking to the Future

Future Rulemaking by the DOL due by December 29, 2024:

Creation of Lost and Found Database
Consolidation of Plan Notices
Performance Benchmarking for Asset Allocation Funds

January 1, 2026:

Paper Statement Mandate
Saver's Match: Enhancement of Saver's Credit