



# **SECURE 2.0 Act Update**

Tulsa Employee Benefits Group | February 15, 2024

**Presented by Sam Wilkerson**

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# Background

# SECURE 2.0 Act of 2022

- Part of Consolidated Appropriations Act, 2023
- Enacted December 29, 2022
- Consolidated three separate bills
- Numerous changes affecting retirement plans
- Many provisions are optional
- Builds on the SECURE Act
- Effective dates vary

# Certain provisions and timeline

Immediately Effective	
Recovery of Overpayments	Treatment of Employer Contributions as Roth
Qualified Federally Declared Disaster Distributions and Loans (disasters occurring on or after 1/26/2021)	Repayment of Qualified Birth or Adoption Distribution Limits (distributions after 12/29/2022)
Termination of Variable Rate Premium Indexing	Removal of RMD Barriers for Life Annuities (calendar years ending after 12/29/2022)
Expansion of EPCRS	Qualified Longevity Annuity Contract Revisions
Terminal Illness Distributions (distributions after 12/29/2022)	

# Certain provisions and timeline

*(cont'd)*

Effective for Years Beginning After December 29, 2022	
Excise Tax Reduction for Late RMDs	Hardship Distribution Self-Certification
Lump Sum Window Distribution Notices (regulations not earlier than 12/29/2023)	Unenrolled Participant Notices (plan years beginning after 12/31/2022)
Increase in Age for RBD for RMDs	Small Financial Incentives for Plan Contributions
Automatic Portability Transaction Exemption (transactions beginning 12/29/2023)	Multiple Employer 403(b) Plans (plan years beginning after 12/31/2022)
Tribal Government Domestic Relations Orders (orders received after 12/31/2022)	

# Certain provisions and timeline

*(cont'd)*

Effective for Years Beginning After December 31, 2023	
Matching Contributions for Student Loan Payments	Benchmarks for Asset Allocation Funds (updated regulations by 12/29/2024)
403(b) Hardship Distribution Rules	Roth Plan Distribution Rules and RMDs
Emergency Expense Distributions (distributions after 12/31/2023)	Safe Harbor Corrections for Elective Deferral Failures (errors after 12/31/2023)
Pension-Linked Emergency Savings Accounts	Mandatory Distribution Dollar Limit (distributions after 12/31/2023)
Domestic Abuse Withdrawals (distributions after 12/31/2023)	Roth Catch-Up Contributions for Certain Participants (delayed until 2026)
Defined Benefit Annual Funding Notice	Amendments to Increase Benefit Accruals
Retirement Savings Lost and Found (create database by 12/29/2024)	Surviving Spouse Election to be Treated as Employee for RMDs

# Certain provisions and timeline

*(cont'd)*

## Effective for Years Beginning After December 31, 2024

Expansion of Auto Enrollment

Long-Term Part-Time Employee Revisions

Increased Catch-Up Contribution Limits

Long-Term Care Contracts Purchased with Distributions (effective 12/29/2025)

## Effective for Years Beginning After December 31, 2025

Required Paper Statements

# Initial Guidance



# Employee Plans Compliance Resolution System (EPCRS) Expansion

## Notice 2023-43

- Self-correction program (SCP) expanded
  - Any eligible inadvertent failure subject to certain conditions
  - Certain SCP requirements under EPCRS do not apply before EPCRS is updated
  - Certain failures cannot be corrected under SCP before EPCRS is updated
- Did not address
  - Correction of overpayments
  - Correction of automatic contribution errors

# Roth catch-up contributions

## Notice 2023-62

- Certain participant catch-up contributions must be Roth
- Prior year wages exceed \$145,000
- 2-year delay (from 2024 to 2026)
- Plans may continue to permit catch-up contributions after 2023
- More guidance coming
  - Definition of wages
  - Participants without Roth elections

# Recent Guidance

# Long-term part-time (LTPT) employees

## Proposed Rules

- Under the SECURE Act 401(k) plans must allow long-term part-time employees to contribute
  - 3 consecutive years with 500 hours of service and age 21
  - Matching and nonelective contributions optional
  - Can exclude for purposes of nondiscrimination and coverage testing
  - Can exclude for purposes of top-heavy vesting and benefits
- SECURE 2.0
  - Reduced service period from 3 to 2 years
  - Applies to 403(b) plans
  - Service prior to 2021 excluded for eligibility and vesting

# LTPT employees *(cont'd)*

## Proposed Rules

- Eligibility
  - Employees who become eligible under another service requirement are not LTPT employees
  - Statutory entry date rules apply
  - Equivalency method is permitted
  - Elapsed time method is not applicable
  - No break-in-service rules
  - Eligibility computation periods may shift
  - Exclusions based on job classification unrelated to age or service may apply
  - Must be age 21 by end of the service period

# LTPT employees *(cont'd)*

## Proposed Rules

- Employer elections
  - Nondiscrimination and coverage testing election
    - All or nothing
    - Safe harbor plan retains top-heavy exemption if excluded
  - Top-heavy election does not apply to top-heavy determination
  - Elections to exclude do not apply to former LTPT employees
  - Employees excluded based on job classification must be included for purposes of nondiscrimination and coverage testing and top-heavy vesting and benefits
  - Elections to exclude LTPT employees are permitted even if employer contributions are made on their behalf
  - If testing exclusion is elected, LTPT employees may be excluded from catch-up and Roth contributions

# LTPT employees *(cont'd)*

## Proposed Rules

- Special vesting rules continue to apply to former LTPT employees
- Counted for Form 5500 purposes
- No discussion of 403(b) plans

# Automatic enrollment expansion

## Notice 2024-2

- Permissive prior to SECURE 2.0
- New 401(k) and 403(b) plans must include automatic enrollment and automatic escalation features
  - EACA
  - Specific requirements for contribution rates and auto escalation
  - Withdrawal rights
- Not applicable if established before December 29, 2022 (pre-enactment plan)



# Automatic enrollment expansion

*(cont'd)*

## Notice 2024-2

- Plan mergers – single employer plans
  - Two pre-enactment plans
  - Post-enactment plan and pre-enactment plan
  - Post-enactment plan and pre-enactment plan – M&A
- Spin-off from single employer pre-enactment plan
- Mergers and spin-offs involving multiple employer plans

# Small financial incentives for contributing to plan

## Notice 2024-2

- Contingent benefit rule (401(k) plans)
- Universal availability rule (403(b) plans)
- Small financial incentives now permitted
  - Cannot use plan assets
  - No deferral election
  - Cannot exceed \$250
  - Contingent installments permitted
  - Includible in gross income and wages and subject to employment tax withholding

# Terminal illness distributions

## Notice 2024-2

- New exception to 10% additional tax on early distributions to certain terminally ill individuals
- Applies to 401(a) and 403(b) plans
- Must otherwise be eligible for an in-service distribution
- Illness or physical condition can reasonably be expected to result in death within 84 months
- Must be certified by a physician and certification must be provided to plan
- No limit on distribution amount
- Repayment to plan permitted

# Safe harbor correction for elective deferral failures

## Notice 2024-2

- Extends safe harbor correction method for certain elective deferral failures
  - Automatic enrollment or automatic escalation
  - Improperly excluding employees
- Correction requirements include
  - Correct elective deferrals prospectively
  - Correct within certain deadlines
  - Contribute missed matching contributions
  - Notify affected employees
- Also applies to terminated participants

# Roth employer contributions

## Notice 2024-2

- Plans may allow participants to designate employer contributions as Roth contributions
  - Irrevocable election before contributions are allocated
  - Must be able to change election at least once per year
  - Must be fully vested in the contribution type at time of allocation
- Generally contributions are not wages for tax withholding purposes
- Must be reported on a Form 1099-R for allocation year
- Avoids the need for in-plan Roth conversions
- 401(a), 403(b) and governmental 457(b) plans

# Plan amendments

## Notice 2024-2

- Extends the deadline to adopt plan amendments for SECURE 2.0, SECURE 1.0 and the CARES Act
  - December 31, 2026, for nongovernmental plans
  - December 31, 2028, for collectively bargained plans
  - December 31, 2029, for governmental plans
- Applies to interim and discretionary amendments
- Exception from the general rules

# Pension-linked emergency savings accounts (PLESA)

## Notice 2024-22 and DOL FAQs

- Short-term savings accounts
  - Defined contribution plans
  - Roth contributions
  - Separate accounting and recordkeeping required
  - Auto enrollment is permitted
  - No minimum contribution or balance requirements
  - Withdrawals permitted at least monthly
  - Non-highly compensated employees only

# PLESA *(cont'd)*

## **Notice 2024-22 and DOL FAQs**

- \$2,500 limit (indexed for inflation)
- Matching contributions required if otherwise applicable, subject to anti-abuse procedures
- Can be eliminated at any time
- 10% additional tax on early distributions does not apply
- Restrictions on investments
- Notice requirements



# PLESA *(cont'd)*

## Notice 2024-22

- IRS guidance related to anti-abuse rules
  - Anti-abuse procedures are optional
  - Statutory provisions sufficient
    - Order of matching contributions
    - Limit on annual matching contributions
    - Can limit distributions to once per month
  - Unreasonable anti-abuse procedures
    - Forfeiture of matching contributions
    - Suspension of participant contributions to PLESA
    - Suspension of matching contributions

# PLESA *(cont'd)*

## DOL FAQs

- No penalty based on account balance minimum
- Certain administrative rules permitted for contributions
- Can include/exclude earnings in determining contribution limit
- Cannot place an annual limit on contributions to a PLESA
- Contribution timing same as for elective deferrals
- Participants do not have to demonstrate emergency
- Reasonable fees and charges for withdrawals beyond first four

# PLESA *(cont'd)*

## DOL FAQs

- Reasonable fees for general account administration
- No restrictions on method of distribution
- QDIA probably not permitted as designated investment option
- Not required to address PLESA in benefit statements or investment disclosures

# Automatic portability transactions

## Proposed Rules

- Relief for service providers who receive compensation in connection with automatic portability transactions
- Fiduciary decision to participate in these programs
- Plan considerations
  - Service provider must acknowledge fiduciary status in writing
  - Fee disclosures to plans
  - May engage multiple service providers
  - Description of program for SPD purposes
  - Plans must monitor transfers and investment
  - Service providers must maintain a website

# More to Come

# Additional guidance and legislation

- Expansion of EPCRS
- Roth catch-up contributions
- Long-term part-time employees
- Exceptions to 10% additional tax on early distributions
- PLESAs
- Reporting and disclosure RFI
- Matching contributions on student loan payments
- Draft technical corrections bill

# Matching contributions on student loan payments

- Employer contributions made on behalf of an employee on account of a qualified student loan payment treated as matching contribution
- Qualified student loan payments
  - Repayment of qualified education loan incurred to pay qualified higher education expenses
  - Cannot exceed 402(g) limit (or employee's compensation if less) reduced by elective deferrals
  - Employee certification annually
  - Employer may rely on certification

# Matching contributions on student loan payments *(cont'd)*

- Treatment of matching contributions
  - Must be at the same rate as for elective deferrals
  - Must be otherwise eligible for matching contributions
  - All employees eligible to receive matching contributions on elective deferrals must be eligible
  - Vest in the same manner as other matching contributions
- Annual deadline for claiming matching contributions cannot end before 3 months after close of plan year
- Separate ADP test is permitted
- Need agency guidance to implement



# Draft technical corrections bill

- Catch-up contributions
- RMD age for individuals born in 1959
- Terminal illness distributions
- Overpayment recoveries
- Student loan matching contributions
- Retirement savings lost and found
- Automatic enrollment mandate
- Increased catch-up contributions (ages 60-63)

# Questions?

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