



SECURE 2.0 Act Update

Tulsa Employee Benefits Group | February 15, 2024

Presented by Sam Wilkerson
McAfee & Taft

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 RFIs
- 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?

Sam Wilkerson
Attorney
McAfee & Taft
sam.wilkerson@mcafeetaft.com

