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Strategic Perspective

SECURE 2.0 Rings in New Year with Major Changes to Retirement Plans

The "Further Continuing Appropriations Act, 2023," as signed by President Biden on December 29, 2022, includes long anticipated, wide-ranging retirement plan legislation. The SECURE 2.0 Act of 2022 represents an amalgam of legislative initiatives passed in 2022 by the House (Securing a Strong Retirement Act of 2022) and the Senate (Enhancing American Retirement Now (EARN) Act and Retirement Improvement and Savings Enhancement to Supplement Health Investments for the Nest Egg (RISE and SHINE) Act) that were designed to build upon initiatives in the SECURE Act of 2019 to further increase the accessibility and flexibility of 401(k) plans, IRAs, and other retirement vehicles.

The Act contains slightly over 90 provisions with over half effective in 2023 or earlier. This Strategic Perspective highlights the major provisions.

I Expanding Coverage and Increasing Retirement Savings

Expansion of Automatic Enrollment (Effective 2025). Newly established 401(k) and 403(b) plans are required, effective for plan years beginning after December 31, 2024, to automatically enroll employees in the plans upon becoming eligible to participate (Code Sec. 414A, added by Act Sec. 101(a)). Thus, automatic enrollment would no longer be an option for affected employers. However, exceptions are provided for plans established before the date of enactment, small employers with 10 or fewer employees, church plans, SIMPLE plans, governmental plans, and businesses that have been operation for less than 3 years (Code Sec. 414A(c))

Minimum contribution percentage of 3-10 percent. The automatic enrollment amount (uniform percentage of compensation) in an employee's first year of participation must be at least 3 percent but no more than 10 percent (Code Sec. 414A(b)(3)(A)(i)).

Automatic escalation. The annual enrollment amount will increase, in each year subsequent to the initial year of participation, by 1 percentage point, until it reaches at least 10 percent, but no more than 15 percent (Code Sec. 414A(b)(3)(A)(ii)). However, participants may specifically elect not to have contributions made or have contributions made at a different percentage.

Safe harbor plans. The 15% cap on automatic escalation applies to safe harbor plans. However, the cap for non-safe harbor plans is 10% for plan years ending before 2025 (Code Sec. 414A(b)(3)(B)).

Safe Harbor Correction of Automatic Enrollment Failures (Effective for errors after 2023). Employers are allowed a grace period in which to correct, without penalty, reasonable errors in the administration of automatic enrollment and automatic escalation features (Code Sec. 414(cc), added by Act Sec. 350). Errors must be corrected within 9 ½ months after the end of the plan year in which the mistakes were made (Code Sec. 414(cc)(2)).

Plan sponsors must make a corrective allocation of any matching contributions (including earnings) to which the employee may have been entitled. However, employers are not required to make a corrective contribution restoring missed deferrals (Code Sec. 414(cc)(3)).

Increased Credit for Small Employer Start Up Costs (Effective 2023). The credit provided for starting a pension plan, will, effective for tax years beginning after December 31, 2022, increase from 50 percent to 100 percent of qualified start up costs, for employers with up to 50 employees (Code Sec. 45E(e)(4), added by Act Sec. 102(a)).

Additional credit for employer contributions. An additional credit is authorized for contributions by employers (of up to 50 employees) to eligible plans, other than defined benefit plans. The additional credit is a percentage of the amount contributed by the employer (other than elective deferrals) on behalf of employee, up to a cap of $1,000 per employee (Code Sec. 45E(f), added by Act

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Sec. 102(b)). The credit will be phased out for employers with 51 to 100 employees).

Wage limitation. No contributions made with respect to an employee who receives taxable wages in excess of $100,000 may be taken into account in applying the dollar limitation (Code Sec. 45E(f)(2)(C)).

Saver's Match (Effective 2027). The existing nonrefundable tiered Saver's Credit will be replaced, effective for tax years beginning after 2026, with a new federally provided refundable matching contribution that must be deposited into a taxpayer's IRA or retirement plan (but not a Roth account) (Code Sec. 6433, added by Act Sec. 103). The match would not be tiered, but would equal 50 percent of IRA or retirement plan contributions up to $2,000 per individual. However, the authorized match would phase out for adjusted gross income between $41,000 and $71,000 for joint filers; $20,500 to $35,500 for single taxpayers and married couples filing separately; and $30,750 to $53,250 for head of household filers.

Employee contributions will not be applied towards the annual contribution limits. However, taxpayers are advised that the match will be taxed upon distribution and penalties will apply to early withdrawals of the saver's matching contribution.

Increased Age for Required Beginning Date for Mandatory Distributions (Effective 2023). The applicable age by which required minimum distributions under a qualified plan or IRA must begin will increase, from age 72 to age 73, beginning on January 1, 2023, and to age 75 by 2033 (Code Sec. 401(a)(9)(C)(v), as added by Act Sec. 107(c) and Code Sec. 408(b), as amended by Act Sec. 107(d)). Specifically, the applicable age for an individual (employee or IRA owner) who attains age 72 after December 31, 2022, and age 73 before January 1, 2033 (i.e., born between 1951-1959), would be 73. The applicable age would further increase to 75 for individuals who attain age 74 after December 31, 2032 (i.e., born 1960 or later).

Spousal beneficiaries. The extended applicable age also will apply to spousal beneficiaries (Code Sec. 401(a)(9)(B)(iv)(I) and 401(a)(9)(C)(ii)(I), amended by Act Sec. 107(b)). Thus, a surviving spousal beneficiary must begin receiving distributions by December 31 of the calendar year in which the deceased individual employee would have attained age 73 (or the applicable age).

Note: Individuals who attained age 72 in 2022 must continue to take RMDs by April 1, 2023.

Reduction in Excise Tax on Certain Accumulations in Qualified Retirement Plan (Effective after date of enactment). The excise tax assessed for failure to take required minimum distributions from retirement plans, IRAs, and Roth IRAs is, effective for tax years beginning after the date of enactment, is reduced from 50 percent of the shortfall to 25 percent (Code Sec. 4974(a), as amended by Act Sec. 302(a)). The excise tax is further reduced to 10 percent for individuals who, during a prescribed two-year window (beginning on the date the penalty is imposed), correct the shortfall RMD distribution. (Code Sec. 4974(e), amended by Act Sec. 302(b)).

Pre-Death RMDs from Roth Plans (Effective 2024). Pre-death distributions will no longer be required from owners of a designated Roth account in an employer-sponsored plan (Code Sec. 402A(d)(5), as added by Act Sec. 325). Thus, the pre-death exemption will no longer be limited to Roth IRAs.

The provision will generally apply to tax years beginning after December 31, 2023. However, the amendment will not apply to distributions which are required for years beginning before January 1, 2024, but are permitted to be paid on or after that date (Act Sec. 325(b)).

Surviving Spouse Election to be Treated as Employee for RMD Purposes (Effective calendar years after 2023). A surviving spouse may elect, effective for calendar years beginning after December 31, 2023, to be treated as the deceased employee for required minimum distribution purposes, thereby possibly delaying distributions (Code Sec. 401(a)(9)(B)(iv), amended by Act Sec. 327). In addition, if the spouse is the employee's sole designated beneficiary, the applicable distribution period after the participant's year of death is to be determined under the Uniform Lifetime Table, rather than the Single Lifetime Table (Act Sec. 327(b)).

Election by surviving spouse. The spousal election must be made in compliance with procedures to be prescribed by IRS and include a timely notice to the plan administrator. In addition, the election may not be revoked, absent IRS consent (Code Sec. 401(a)(9)(B)(iv)).

Military Spouse Retirement Plan Eligibility Credit for Small Employer (Effective after date of enactment). A new nonrefundable tax credit is provided, effective for tax years beginning after the date of enactment, for small employers sponsoring defined contribution plans that: (1) provide for immediate plan eligibility for spouses of active duty military members within two months of hire; (2) make the military spouse, upon plan eligibility, eligible for matching or nonelective contributions for which they otherwise have been eligible at two years of service; and (3) make the military spouse 100% immediately vested in all employer contributions (Code Sec. 45AA, added by Act Sec. 112).

The tax credit is $200 per military spouse participant, plus employer contributions up to $300 per employee. However, the credit is available for only three years, starting with the initial year of participation in the plan by the military spouse and is limited to nonhighly compensated employees (Code Sec. 45AA(b)).

Penalty- Free Withdrawals For Unforeseeable Emergency Expenses (Effective 2024). Participants in 401(k) plans, IRAs, and other tax-preferred retirement accounts are allowed, effective for distributions after December 31, 2023, one penalty-free withdrawal of up to $1,000 per year for "unforeseeable or immediate financial needs relating to personal or family emergency expenses" (Act Sec. 115, adding Code Sec. 72(t)(2)(I)) Plan administrators may rely on employee's certification of the emergency.

Limit on withdrawals absent repayment. Participants may repay the distribution within three years (Code Sec. 72(t)(I)(vi). In addition, taxpayers are cautioned that additional withdrawals are not allowed for three years unless the initial withdrawal has been repaid (Code Sec. 72(t)(2)(I)(vii)).

Pension-Linked Emergency Savings Accounts (Effective 2024). Sponsors of 401(k), 403(b), and 457(b) plans, effective for plan years after December 31, 2023, are afforded the option of amending the plans to provide "Pension-Linked Emergency Savings Accounts" for non-highly compensated employees (ERISA Sec. 3(45) and ERISA Sec. 801-804, added by Act Sec. 127). Employers may automatically enroll employees into the "linked" account at up to 3% of compensation, up to $2,500 (indexed for inflation) or a lower amount set by the employer. Contributions in excess of the $2,500 cap are to be returned to the employee's Roth DC plan or discounted until the balance attributable to the contributions falls below the cap.

Contributions are made on a post-tax Roth basis. However, contributions are treated as elective deferrals for matching contribution purposes.

Participants may take at least one withdrawal per month. The first four withdrawals may not be subject to any fees. Upon separation from service, employees may take a distribution of the emergency savings account in cash. Alternatively, employees may roll the funds over to the Roth DC plan or an IRA.

Employer Reliance on Employee Certification of Hardship (Effective date of enactment). Participants and beneficiaries may, effective on the date of enactment, self-certify that they satisfy the regulatory safe harbor conditions necessary for a hardship distribution from a 401(k) or 403(b) plan, as well as the conditions allowing for an unforeseeable emergency distribution from a 457(b) plan (Code Sec. 401(k)(14)(C), added by Act Sec. 312(a); Code Sec. 403(b)(7)(D), added by Act Sec. 312(a); Code Sec. 403(b)(11), amended by Act Sec. 312(b); Code Sec. 457(d)(4), added by Act Sec. 317(c)). The amended rules further allow a plan administrator to rely on an employee's self-certification that the amount of the requested distribution does not exceed the amount required to satisfy the financial need

Hardship Withdrawal Rules for 403(b) Plans (Effective 2024). Amounts in a 403(b) plan that may be distributed upon hardship, effective for plan years beginning after December 31, 2023, include: salary reduction contributions, qualified nonelective contributions (QNECs), qualified matching contributions (QMACs), and earnings on those contributions and elective deferrals (Code Sec. 403(b)(17), added by Act Sec. 602(a)).

Further conforming the 403(b) hardship rules to those applicable to 401(k) plans, hardship distributions from a 403(b) plan may not be conditioned on an employee taking any available loan under the plan (Code Sec. 403(b)(17)(B)).

Increased Catch-Up Limits at Age 60-63 (Effective 2025). Participants in defined contribution plans (other than SIMPLE plans) are allowed to make catch-up contributions of up to $10,000, if they have attained age 60 by the close of the tax year. The increased limit would apply in tax years beginning after December 31, 2024 (Code Sec. 414(v)(2)(B)(i), amended by Act Sec. 109)).

Increased contributions for participants aged 60-63. Specifically, a 401(k) plan, 403(b) plan, or governmental 457(b) plan may increase the limit on catch-up contributions for individuals who would attain age 60 but not age 64 before the close of the tax year, to the greater of (1) $10,000 or (2) 150 percent of the regular 2024 catch-up limit (as indexed) (Code Sec. 414(v)(2)(E)(i), added by Act Sec. 109(b)(1)).

SIMPLE plans. The limit on catch-up contributions for individuals age 60-63 in SIMPLE 401(k) plans and SIMPLE IRAs is increased to the greater of: (1) $5,000 or (2) 150 percent of the regular match-up amount applicable in 2025 (as indexed) (Code Sec. 414(v)(2)(B)(ii), amended by Act Sec. 109(a)(1); Code Sec. 414(v)(2)(E)(ii), added by Act Sec. 109(b)).

IRA Catch-Up Limit to be Indexed (Effective tax years after 2023). The annual IRA catch-up limit ($1,000) is indexed for inflation, effective for tax years beginning after December 31, 2023) (Code Sec. 219(b)(5)(C)(iii), added by Act Sec. 108) For the first time, the catch-up limit would be indexed (in $100 increments), in the same manner as traditional IRA limits.

Higher Earners Must Make Catch-Up Contributions on Roth Basis (Effective 2024). The increased catch-up limit for participants age 60-63 coincides with the requirement that ***all*** catch-up contributions to qualified plans, effective for tax years beginning after December 31, 2023, be made on an after-tax Roth basis (Code Sec. 414(v)(7), added by Act Sec. 603). However, the Roth condition does not apply to employees with wage compensation of $145,000 or less (as indexed) in the preceding calendar year from the employer sponsoring the plan. In addition, the requirement does not apply to IRAs, SIMPLE IRAs or SEP plans (Code Sec. 414(v)(7)C)).

Note: The requirement that catch-up contributions by employees earning over $145,000 effectively precludes such contributions in plans that do not provide a Roth option.

Student Loan Payments Treated as Elective Deferrals (Effective 2024). The definition of matching contributions under 401(k) plans and other defined contribution plans is modified, effective for contributions made for plan years beginning after 2023, to include employer contributions made to the plan on behalf of an employee on account of a "qualified student loan payment" (Code Sec. 401(m)(4)(A)(iii), added by Act Sec. 110(a)). Effectively, student loan repayments (as certified by the employee) for qualified "higher education expenses" would be treated as elective deferrals for purposes of applicable matching contribution requirements. The rules would also apply to 403(b) plans, 457(b) plans, and SIMPLE IRAs.

Aggregate payments limited by elective deferral limit. Aggregate payments for the year may not exceed the applicable Code Sec. 402(g) elective deferral limit (reduced by elective deferrals made by the employee for the year) (Code Sec. 401(m)(4)(D), added by Act Sec. 110(b)).

Application of nondiscrimination rules. Plans are permitted to apply the ADP test separately to employees who receive matching contributions on account of qualified student loan payments for the plan year (Code Sec. 401(m)(13)(B)(iv), added by Act Sec. 110(c)).

Application of Small Employer Start-Up Credit to Employers Joining an Existing Plan (Effective 2020). The credit authorized under Code Sec. 45E for 50 percent of a plan's start up costs is, retroactively effective for tax years beginning after December 31, 2019, available for 3 years for employers joining a Multiple Employer Plan (MEP), regardless of how long the MEP has been in existence. (Code Sec. 45E(d)(3)(A), amended by Act Sec. 111(a)). Under the amendment, the first credit year would be the date the plan becomes ''effective with respect to the eligible employer.'' Thus, small employers (under 100 employees) joining a MEP (including pooled employer plans (PEPs)) may claim the start up credit for all three years.

Contribution Limit for SIMPLE IRAs (Effective 2024). The annual limits on elective deferrals to a SIMPLE IRA plan ($15,500 for 2023) and catch-up contributions ($3,500 for 2023) will be increased, effective for tax years beginning after December 31, 2023, by 10 percent of the limit that would otherwise apply in 2024 (Code Sec. 408(p)(2)(E), amended by Act Sec. 117(a); Code Sec. 414(v)(2), amended by Act Sec. 117(b)).The increase is applicable to employers with no more than 25 employees who received at least $5,000 in compensation in the preceding year. Employers with between 26-100 employees may offer the higher deferral limit, but only if the employer provides a 4 percent matching contribution or a 3 percent employer contribution.

The contribution limits applicable to SIMPLE 401(k) plans have been similarly adjusted (Code Sec. 401(k)(11)(E), added by Act Sec. 117(g)).

Starter 401(k) Plans for Employers With No Retirement Plan (Effective 2024). Employers that do not sponsor a retirement plan are allowed to offer employees, effective for plan years beginning after December 31, 2023, a Starter 401(k) *deferral* only plan, or a Safe harbor *deferral* only 403(b) plan (Code Sec. 401(k)(16), added by Act Sec. 121(a); Code Sec. 403(b)(16), added by Act Sec. 121(b)).

A Starter plan would generally require all eligible employees (satisfying the applicable age and service requirements) to be automatically enrolled in the plan at a deferral rate of 3 to 15 percent of compensation. The limit on annual deferrals would be $6,000, plus a $1,000 catch-up contribution (equal to the 2022 IRA contribution limits), to be indexed for inflation.

Improved Coverage for Part-Time Workers (Effective 2025). The length of service a long-term part time employee must provide before being able to participate in a 401(k) plan or 403(b) plan will be reduced, effective for plan years after 2024, from three years to two years (Code Sec. 401(k) (2)(D)(ii), amended by Act Sec. 125(c); ERISA Sec. 202(c), as added by Act Sec. 125(a)). Thus, a long-term part-time employee (other than a collectively bargained employee or nonresident alien) will be eligible to participate in the plan after completing: (1) one year of service, or (2) two consecutive 12-month periods of service in which the employee has completed at least 500 hours of service, and by the close of which has attained age 21.

Clarification of pre-2021 service on vesting. Under current law, 12-month periods beginning before January 1, 2021 are not considered for purposes of a long-time part-time employee's eligibility, but are included for purposes of determining the employee's nonforfeitable right to employer contributions. However, effective for plan years beginning after December 31, 2020 (effective date of SECURE Act of 2019), such periods of service are also to be disregarded in determining the vesting of employer contributions (Act Sec. 125(d), amending SECURE Act. Sec. 112(b)).

Rollover of 529 Funds to Roth IRA (Effective 2024). Residual funds in a 529 savings account may, effective for distributions after December 31, 2023, be rolled over to a Roth IRA maintained for the beneficiary (Code Sec. 529(c)(3), added by Act Sec. 126). Beneficiaries will be allowed to directly rollover up to $35,000 during their lifetime from any 529 account in their name to a Roth IRA. However, rollovers will be subject to the Roth annual contribution limits and the 529 account must have been open for more than 15 years.

II Preservation of Income

Remove Required Minimum Distribution Barriers for Life Annuities (Effective calendar years ending after date of enactment). Certain barriers to the availability of life annuities in qualified plans and IRAs (imposed under the actuarial test applicable to required minimum distributions) are removed. Specifically, effective for calendar years ending after the date of enactment, commercial annuities (under Code Sec. 3405(e)(6)) that are issued in connection with any eligible retirement plan (other than a defined benefit plan) may provide annuity payments that increase by a constant percentage, applied not less frequently than annually, at a rate that is less than five percent per year, in addition to other options (Code Sec. 401(a)(9)(J), added by Act Sec. 201).

Qualifying Longevity Annuity Contracts (Effective date of enactment). IRS is instructed to amend governing IRS Reg. §1.401(a)(9)-6 (Q/ A-17(b)(3)) and IRS Reg. §1.408-8 (Q/A A-12(b)(3)), within 18 months of enactment, to eliminate the requirement that premiums for qualifying longevity annuity contracts (QLACs) be limited to 25 percent (or any other percentage) of an individual's account balance (Act Sec. 202(a)(1)). IRS is also required to amend the regulations to increase the dollar limitation on premiums for QLACs from $125,000 (indexed to $145,000 in 2022) to $200,000 (indexed) (Act Sec. 202(a)(2)).

Joint and survivor rights. IRS is further directed to amend IRS Reg. §1.401(a)(9)-6, Q&A-17(c) to provide spousal protection in the event of a divorce occurring after the purchase of a QLAC with joint and survivor annuity benefits for an employee or an employee's spouse (Act Sec. 202(a)(2)). The provision is designed to facilitate the sale of QLACs with spousal survival rights.

90-day free-look period. IRS is additionally required to clarify that a QLAC may include a provision allowing an employee to rescind the purchase of the contract within 90 days from the date of purchase. (Act Sec. 202(a)(4)).

Effective dates. The repeal of the 25 percent excise tax and the increased premium limit are effective with respect to contracts purchased or received in an exchange on or after the date of enactment (Act Sec. 202(c)). The provisions governing joint and survivor rights and authorizing the free-look period are effective with respect to contracts purchased or received in an exchange on or after July 2, 2014.

Enforcement prior to issuance of regulation. IRS is empowered, prior to the date the required final regulations are issued, to administer and enforce the law in accordance with the amendment required by the Act (Act Sec. 202(c)(2)). However, taxpayers are allowed to rely upon their reasonable good faith interpretations of the amendments.

III Simplification and Clarification of Retirement Plan Rules

Recovery of Retirement Plan Overpayments (Effective date of enactment). Plan fiduciaries, effective as of the date of enactment, are authorized to exercise their discretion to not seek recovery of all or part of "inadvertent" benefit overpayments" (ERISA Sec. 206(h), added by Act Sec. 301(a); Code Sec. 414(aa), added by Act Sec. 301(b)). However, employers are not relieved of their minimum funding obligation or the duty to prevent or restore an impermissible forfeiture (ERISA Sec. 206(h)(3) and Code Sec. 414(aa)(3)).

In the event a fiduciary elects to seek recoupment of inadvertent benefit overpayments, it must adhere to specified conditions intended to protect innocent participants and beneficiaries (e.g., restrictions on interest and a 3-year period during which benefits may be recouped) (ERISA Sec. 206(h), as added by Act Sec. 301(a)).

Retirement Savings Lost and Found (Effective two years after date of enactment). The Department of Labor is required, within two years of the date of enactment, to establish a national online search database: "Retirement Savings Lost and Found" (ERISA Sec. 523, added by Act Sec. 303). The database is to be designed to enable participants to locate the administrator of any qualified defined benefit or defined contribution plan (subject to the vesting rules of ERISA Sec. 203) with respect to which they were a participant or beneficiary (ERISA Sec. 523(b)). However, individuals would be allowed to opt out of the program (ERISA Sec. 523(c)).

Dollar Limit for Mandatory Distributions (Effective 2024). The limit on involuntary cash-out distributions will increase, effective for distributions made after December 31, 2023), from $5,000 to $7,000 (ERISA Sec. 203(e)(1), Code Sec. 401(a)(31)(B)(ii) and Code Sec. 411(a)(11)(A), amended by Act Sec. 304).

Expansion of EPCRS (Effective date of enactment). The scope of the Employee Plans Compliance Resolutions System (EPCRS) is expanded, upon the date of enactment, to allow for the self-correction of "eligible inadvertent failures" under qualified plans, 403(a) and (b) plans, SIMPLE IRAs, and SEPs (Act Sec. 305). Self-correction is authorized for significant and insignificant inadvertent failures unless: (i) the failure was identified by IRS prior to any actions by the plan sponsor demonstrating a commitment to implement a self-correction, or (ii) the correction was not completed within a reasonable period of time after it was identified. In addition, an eligible inadvertent failure will not include any failure which is: egregious, relates to the diversion or misuse of plan assets, or is directly or indirectly related to an abusive tax avoidance transaction (Act Sec. 305(e)(2)).

Correction of loan error. The self-correction of eligible inadvertent failures related to plan loans must be made pursuant to the procedures set forth under Rev. Proc. 2021-30, Sec. 6.07, including those related to the reporting of deemed distributions on Form 1099-R (Act Sec. 305(b)).

The DOL is required to treat eligible inadvertent loan failures that are self-corrected as meeting the requirements of the Voluntary Fiduciary Correction Program with respect to fiduciary violations (Act Sec. 305(b)(2)).

IRA failures. IRS is instructed, within two years of enactment, to expand EPCRS to allow IRA custodians, for the first time, to address eligible inadvertent failures (Act Sec. 305(c)).

Family Attribution Rules (Effective 2024). The family attribution rules are, effective for plan years beginning after December 31, 2023, updated to require community property laws to be disregarded for purposes of determining ownership. In addition, the rules governing the attribution of stock between parents and minor children have been modified (Code Sec. 414(b)(2)(A), amended by Act Sec. 315(a); Code Sec. 414(m)(6)(B), amended by Act Sec. 315(b)).

Amendment to Increase Benefit Accruals Under Plan for Previous Plan Year Allowed Until Employer Tax Return Due (Effective 2024). Stock bonus, pension, profit-sharing and annuity plans will be allowed to adopt discretionary, retroactively effective amendments increasing participant benefits by the due date of the employer's tax return (including extensions). (Code Sec. 401(b)(3), added by Act Sec. 316(a)). Specifically, effective for plan years beginning after December 31, 2023, an employer may amend the plan to increase benefit accruals under the plan effective for the preceding plan year (other than by reason of increasing the amount of matching contributions) if the amendment was adopted by the due date of the employer's tax return for the tax year (including extensions). Under such circumstances, the amendment will be treated as having been adopted as of the last day of the plan year in which the amendment was effective.

Retroactive First Year Elective Deferral for Sole Proprietors (Effective after date of enactment). Plans sponsored by sole proprietors and single member LLCs (i.e., Solo 401(k)s) are allowed, effective for plan years beginning after the date of enactment, to receive employee elective deferrals up to the due date of the employee's tax return filing date for the initial plan year. Under the amended rules, if an individual who owns the entire interest in an unincorporated trade or business, and is the only employee of the trade or business, makes elective deferrals to a plan before the time by which the individual's tax return is due (without regard to any extensions) ending after or with the end of the plan's first plan, year, the deferral will be treated as having been made for the end of the first plan year (Code Sec. 401(b)(2), amended by Act Sec. 317).

Modified Treatment of IRAs Involved in Prohibited Transactions (Effective date of enactment). The penalty imposed upon a person who engages in a prohibited transaction with respect to an IRA is the disqualification of the entire account or annuity as of the first day of the tax year during which the prohibited transaction occurred.

The penalty under Code Sec. 408(e) will now be restricted, effective for tax years beginning after the date of enactment, to the portion of the IRA account used in the prohibited transaction (Code Sec. 408(e)(2)(A), amended by Act Sec. 322(a)). Specifically, only the amount involved in the prohibited transaction will be treated as a distribution to the IRA owner or beneficiary. Thus, an account will not be treated as distributing all of its assets to the individual, but only the fair market value of the portion of the account involved in the prohibited transaction.

Use of Retirement Funds in Connection with Federally Declared Disasters (Effective for disasters on or after January 26, 2021). Permanent rules are provided authorizing the use of retirement funds to pay for expenses incurred in the event of qualified federally declared disasters. Under the new rules, retroactively effective for disasters occurring on or after January 26, 2021, up to an aggregate $22,000 (*per disaster*) may be distributed from a retirement plan or IRA. The qualified disaster recovery distribution would not be subject to the 10 percent penalty tax and could be included in income over a 3-year period (rather than fully in the year of distribution). Distributions may also be repaid to the tax-preferred account within three years of distribution (Code Sec. 72(t)(2)(11), added by Act Sec. 331(a)).

Amounts distributed prior to a disaster for purchase of a home may be recontributed to the plan (Code Sec. 72(t)(8)(F) and Code Sec. 402(c)(13), added by Act Sec.

331(b)). Employers may also allow affected individuals to borrow a greater amount from the plan and further afford such employees additional time to repay the loans (Code Sec. 72(p)(6), added by Act Sec. 331(c)).

Elimination of Additional Tax on Corrective Distributions of Excess Contributions (Effective for determinations on or after date of enactment). Corrective distributions of excess contributions to an IRA (and allocable earnings) will no longer be subject to the 10 percent penalty tax on early distributions (Code Sec. 72(t)(2)(A)(ix), added by Act Sec. 333). The provision will apply to any determination of, or affecting, liability for taxes, interest or penalties that is made on or after the date of enactment, without regard to whether the act (or failure to act) upon which the determination is based occurred before the date of enactment (Act Sec. 333(b)).

Requirement to Provide Paper Statements (Effective 2026 plan years). Defined contribution plans will be required, effective for plan years beginning after December 31, 2025, to provide participants and beneficiaries with at least one paper benefit statement for a calendar year (ERISA Sec. 105(a)(2)(E), added by Act Sec. 338). Defined benefit plans would, similarly, need to provide at least one paper benefit statement every three years. However, exceptions are authorized for plans that provide statements in accordance with the safe harbor rules for electronic delivery set forth in ERISA Reg. §2520.104b-1(c).

Termination of Variable Rate Premium Indexing (Effective date of enactment). The variable rate premium, effective on the date of enactment, will no longer be indexed for inflation (ERISA Sec. 4006(a)(8)(viii), added by Act Sec. 349). Thus, the variable rate premium after 2023 will permanently remain $52 for each $1,000 of unfunded vested benefits (the applicable 2023 rate).

Note: The flat rate premium will continue to be indexed for inflation.

Defined Benefit Plan Annual Funding Notice (Effective 2024 plan years). The annual funding notice required of DB plans will, effective for plan years beginning after December 31, 2023, be modified to further clarify a plan's funded status (ERISA Sec. 101(f)(2)(B), amended by Act Sec. 343). Plans will no longer need to furnish the "funding target attainment percentage," but will need to disclose the "percentage of plan liabilities funded." In addition, the notice would need to include a statement of whether the plan's funded status for the plan year to which the notice relates and for the two preceding plan years, is at least 100% (or the actual percentage), and indicate whether the plan has sufficient assets to fund liabilities not guaranteed by PBGC.

IV Plan Amendments

Required Plan Amendments (Effective date of enactment). Plan amendments required by the Act may be made on or before the last day of the 2025 plan year (2027 plan year for governmental plans and collectively bargained plans) (Act Sec. 501). However, the plan must be operated in accordance with such amendments as of the effective date of an Act requirement, DOL or Treasury regulation, or amendment.

The plan amendment deadlines under the SECURE Act of 2019, the CARES Act, and the Taxpayer Uncertainty and Disaster Tax Relief Act of 2020 are also amended to conform to the new dates (Act Sec. 501(c)).

V Revenue Provisions

SIMPLE and SEP Roth IRAs (Effective 2023). SIMPLE IRAs, effective for tax year beginning after December 31, 2022) may accept Roth contributions, as elected by an employee (Code Sec. 408A(f), deleted by Act Sec. 601).

Employers may now also offer employees the option of electing to treat employee and employer contributions to a Simplified Employee Pension Plan (SEP) as Roth contributions (Code Sec. 402(h)(1)(C), added by Act Sec. 601).

Optional Treatment of Employer Matching or Nonelective Contributions as Roth Contributions (Effective on date of enactment). Qualified plans, 403(b) plans, governmental 457(b) plans may, effective on the date of enactment, allow employees to designate employer matching or nonelective contributions as Roth contributions (Code Sec. 402A, amended by Act Sec. 604). Thus, for example, matching contributions to a Roth 401(k) account would not have to be first transmitted to the non-Roth 401(k) account.

Conclusion

SECURE 2.0 presents an abundance of challenges and opportunities for plan sponsors, administrators, recordkeepers, advisors, and participants. In addition to being aware of the provisions that are effective on the December 29, 2022 date of enactment or in 2023, plan sponsors and administrators may need to proactively prepare for the substantial changes that are effective after 2023. As with SECURE 2019 and all preceding pension legislation, retirement professionals can expect a tsunami of guidance from IRS and DOL implementing and clarifying the law.