

SECURE Act 2.0

What You Need To Know



Kevin Wade

Vice President, Consulting
Actuarial & Pension
Services



Pam Stobnicke

Implementation Manager
Plan Administration &
Recordkeeping



SECURE 2.0 Act of 2022

- Part T of the Consolidated Appropriations Act 2023
- Enacted December 29, 2022
- Approximately 90 provisions
- Plans need to be amended as of the last day of the first plan year beginning on or after 1/1/2025 (2027 for governmental plans); i.e. 12/31/2025 for calendar year plans
 - Must operate in accordance with law and amendment as ultimately adopted (keep track!)
 - For terminating plans, presumably the amendment deadline is the termination date
- Amendment deadline also applies to SECURE Act, CARES Act, Taxpayer Certainty and Disaster Tax Relief Act of 2020



Age Increases for Required Minimum Distributions

Effective Now / Required

- RMDs will now be due April 1st of the year following the later of the year in which the participant attains the “applicable age” or (except for 5% owners) the year in which the participant retires.
 - The applicable age for a person who attains age 72 after December 31, 2022 and age 73 before January 1, 2033 is age 73.
 - The applicable age for a person who attains age 74 after December 31, 2032 is age 75.
 - The excise tax imposed on participants who fail to take an RMD is decreased from 50% to 25%, or to 10% if corrected within a two-year window.

Comment: Someone who turns 73 in 2032 for an applicable age of 73 will also turn 74 in 2033 for an applicable age of 75. Congress will need to provide technical corrections to the legislation to resolve this.

Indexing of the PBGC Variable Rate Premium (VRP) for Defined Benefit Plans is Eliminated

Effective Now / Required

- Annual cost of living increases to the premium have been eliminated and the VRP is frozen at the current 2023 rate of \$52 per \$1,000 of unfunded vested benefits.

Comment: Underfunded pension plans face a double-edged sword of trying to catch up funding through additional contributions while having to pay continually increasing PBGC premiums. This may help to mitigate and enable plan sponsors to increase funding.



Streamline Notice Requirements to Unenrolled Employees

Effective Now / (No Longer) Required

- Plans are no longer required to provide various notices to employees who have not elected to enroll after they have been given a Summary Plan Description and any other notice related to eligibility to participate in the plan.
- Instead, plans will be required to provide an annual notice reminding the employee of eligibility to participate in the plan, key benefits and rights (including employer contributions and vesting), and any deadlines to enroll.



Qualified Birth or Adoption Distribution

Effective Now / Required

- SECURE 1.0 allowed participants the ability to take a withdrawal up to \$5,000 to help cover the costs associated with the birth or adoption of a child.
 - The employee had the option of repaying the distribution, with no time limit
 - 10% early withdrawal penalty waived
- SECURE 2.0:
 - Participant can repay the QBAD to the plan or an IRA
 - Repayment period is 3 years, beginning the day after the date of receipt of withdrawal
 - Pre 12/29/2022 QBADs can be repaid – no later than 12/31/2025

Cash Balance Accrual Rules

Effective Now / Required

- Cash balance plans that use a variable interest crediting rate may use any reasonable rate not to exceed 6% for purposes of satisfying the accrual rules.

Comment: Cash balance plans with variable interest crediting rates that had tiered formulas that participants grew into over time often had to provide a minimum interest credit rate to be able to satisfy the anti-back-loading accrual rules. Such plan designs can now assume a reasonable fixed rate to satisfy these rules. Guidance is still needed with respect to a plan's ability to eliminate its minimum interest rate.

Qualifying Longevity Annuity Contract Flexibility

Effective Now / Optional

- For QLACs purchased after 12/29/2022, the 25% account limit is repealed
- Permissible dollar amount increased to \$200,000 (as indexed starting 2024)
- Allow ex-spouses to receive spousal benefits pursuant to a QDRO
- Allow “free look” rescission periods up to 90 days

Comment: Treasury has 18 months to amend its QLAC regulations; until then, taxpayers may rely on reasonable good-faith interpretation

Tax Credits for Small Employers

Effective Now / Optional

- Small employer retirement plan startup credit enhancement:
 - 100% of start up costs (up from 50%) for employers with 50 or fewer employees.
 - Credit applies to a Sponsor at the time they join a MEP
- Tax credit for small employers with 100 or fewer employees on employer contributions:
 - Tax credit is a percentage of the employer contribution on behalf of employees with compensation of \$100,000 or less (as indexed); up to \$1,000 per employee
 - Years 1 & 2 – 100%
 - Year 3 – 75%
 - Year 4 – 50%
 - Year 5 – 25%
 - No credit after 5 years
 - Phased out for employers with 51 – 100 employees

Elective Deferrals by Sole Proprietors

Effective Now / Optional

- Unincorporated Sole Proprietors with no employees may retroactively adopt 401(k) Plan by the due date of their tax return (including extensions)
- This includes the option of making a retroactive 401(k) salary deferral
- Does not apply to Partnerships
- Does not apply to any entity with employees



De Minimis Incentives to Participate

Effective Now / Optional

- Previously, matching contributions were the only permitted incentive employers could provide to encourage plan participation.
- Now employers may provide de minimis financial incentives, such as gift cards of a modest amount, to encourage employee participation in 401(k) or 403(b) plans.
- The cost for such incentives may not be paid for with plan assets.

Comment: The Act does not define “de minimis” for this purpose. Ordinarily, a de minimis award would not be taxable to the employee but now IRS views all gift cards the same as cash and taxable. Therefore, depending on the form of the incentive provided, it could be taxable to the employee.



Employer Contributions as Roth

Effective Now / Optional

- Employees can elect to have their employer contributions deposited as Roth.
- Employees must pay taxes on the contributions for the year in which they are deposited.
- Applies to both match and non-elective contributions that are fully vested at the time they are made.
- Applies to 401(k), 403(b) and 457(b) plans.

Comment: Further guidance is needed regarding how these contributions will be treated for purposes of payroll withholding and income tax reporting; among other things.

403(b) Plan Investments in Collective Trusts

Effective Now (sort of) / Optional

- Previously, 403(b) plans could only invest in annuity contracts and mutual funds.
- The Act now permits 403(b) plans to invest in collective investment trusts (CITs), BUT...

Comment: Securities law also limits investments for 403(b) plans and that law has not yet been revised, so 403(b) plan investments in collective trusts are on hold for now.



403(b) MEPs and PEPs

Effective Now / Optional

- 403(b) Plans can now be a MEP or PEP subject to the rules that apply to qualified MEPs and PEPs

PEP Contribution Collection Procedures

Effective Now / Optional

- PEPs can designate any named fiduciary (other than a participating employer) to be responsible for collecting contributions.

Qualified Federal Disaster Relief - Permanent

Effective Now (disasters on or after 1/26/2021) / Optional

- Distributions up to \$22,000 per disaster
- No 10% early withdrawal penalty
- Can be repaid within 3 years
- Repayment of unused hardship distributions taken to purchase primary residence in disaster area
- Temporary increase in plan loan max to \$100,000 or 100% of balance (lesser of)
- 180-day suspension of plan loan repayments; 1 year extension of loan term

Hardship Withdrawal Self-Certification

Effective Now / Optional

- Plan Administrator can rely on a participant's self-certification of the following:
 - Hardship is for immediate and heavy financial need
 - Hardship amount does not exceed the amount required to satisfy the need
 - The participant has no alternative means to satisfy the need
- Applies to 401(k) and 403(b) Plans
- Similar rule applies to administrators of 457(b) plans that allow distributions for unforeseeable emergencies

Terminal Illness Distribution

Effective Now / Optional

- Plan may allow a distribution to a terminally ill participant who is otherwise eligible for a distribution (i.e. this does not create a new distributable event).
- Must be certified by a physician.
- 10% early withdrawal penalty is waived.
- Illness is expected to result in death within 7 years after certification.
- Can be repaid under the same rules as QBADs

Recovery of Overpayments

Effective Now / Optional

- Plan fiduciaries can decide not to recoup certain inadvertent benefit overpayments from participants.
- Plan Sponsor is not required to make up overpayments under certain circumstances
- If a plan seeks recovery of overpayment, certain restrictions and employee protections will apply:
 - No interest can be charged
 - Limiting recoupment from future benefit payments in excess of 10% of the payments
 - Notification within 3 years of the overpayment
- Overpayments that have been rolled over and not repaid will still be treated as eligible rollover distributions.



EPCRS Expansion

Effective Now

- Specifically expands the Self Correction Program under EPCRS
 - Inadvertent errors, despite practices and procedures
 - Loan Failures
 - Plan cannot be under examination



Safe Harbor Correction of Elective Deferral Failures

Effective Now

- EPCRS 0% QNEC “safe harbor” correction of deferral in auto enrollment/ auto escalation plan was to end 12/31/2023
- Congress made it permanent – no sunset
- Rules to qualify for the safe harbor still apply
 - Employers must still pay any matching contributions due the participant
 - Employer has 9 ½ months after plan year to correct, unless participant notifies them of the error sooner
 - Employee must be notified
 - Deferrals must start

Changes to Family Attribution Rules

Effective 2024 / Required

- The spousal ownership attribution rules will not apply to spouses with separate businesses in community property states.
- Similar ownership attribution rules will not apply to minor children.
- This change will affect the control group rules, which can be a complex analysis for individuals who own multiple trades or businesses.

Comment: Spouses who owned separate businesses without involvement of the other spouse were still subject to control group aggregation if they lived in a community property state or had a minor child. This often prevented a business owner without employees from sponsoring a plan if his/her spouse's business had employees.

Roth Requirement for Catch-Up Contributions

Effective 2024 / Required

- Catch-up contributions to 401(k), 403(b), and governmental 457(b) plans by employees whose wages exceed \$145,000 (as indexed) must be made on a Roth basis.
- This Roth treatment of catch-up contributions is mandatory for any plan that makes catch-up contributions available.
- If the plan doesn't allow for Roth deferrals, no catch-up contributions

Comment: This creates another indexed threshold for employers, payroll providers and recordkeepers to track. Why this was not set at the 2023 HCE threshold of \$150,000 for 2024 is mindboggling.



Changes to Defined Benefit Pension Plan Annual Funding Notices

Effective 2024 / Required

- Defined benefit plans that are not exempt from PBGC coverage must provide plan participants with an ERISA required annual funding notice that provides details on the funded status of the plan.

Comment: These annual funding notices for defined benefit plans must be modified to provide participants with additional information regarding the funding status of their plans and the PBGC's guarantee of benefits.





Pension Plan Mortality Table Corrections

Effective 2024 / Required

- For pension plan valuation dates occurring during or after 2024, IRS mortality tables for determining present values shall not assume future improvement rates greater than 0.78 percent.

Comment: This is something the plan's actuary will worry about for purposes of the minimum funding rules. The 0.78 percent may be modified in the future as necessary to reflect material changes in the overall rate of improvement projected by the Social Security Administration.



Cash-Out Threshold and Automatic Portability

Effective 2024 / Optional

- The threshold for a cash-out and automatic transfer to a default IRA, for plans that provide for such, is increased from \$5,000 to \$7,000.
- Plans and recordkeepers will be able to offer automatic portability for amounts transferred to default IRAs provided the IRA may be automatically transferred into the plan of the employee's new employer without the employee needing to take any action.

Comment: Similar to previous cash-out thresholds, the \$7,000 is fixed and not subject to automatic cost of living increases. The mechanics of automatic portability are to be determined, but IRS has been tasked with issuing guidance to improve the rollover process with the next two years.

Mid-Year SIMPLE Replacement

Effective 2024 / Optional

- Employers may now terminate their SIMPLE plans and replace them with safe harbor 401(k) plans during the year.
- Previously, an employer could not contribute to a SIMPLE and another plan for the same year.
- Contribution limits are coordinated for the transition/replacement year.

Comment: This is very helpful for employers who want to transition to a more beneficial program, such as pairing a cash balance plan with a safe harbor 401(k) plan, as they no longer need to wait until the beginning of the next year.



Retroactive Amendments to Increase Benefits

Effective 2024 / Optional

- Employers may now adopt amendments to retroactively increase benefits for a prior plan year provided such are adopted by their tax return due dates, including extensions.
- Unless needed to satisfy a compliance deficiency, these are otherwise discretionary amendments and were generally required to be adopted by plan year end.

Comment: This still does not alleviate the requirement that an amendment be nondiscriminatory in terms of timing and benefits (facts and circumstances).



403(b) Hardship Withdrawal Enhancement

Effective 2024 / Optional

- 403(b) hardship distributions can now include:
 - QNEC and QMAC sources
 - earnings on elective deferrals
- Participants need not take available loans prior to taking a hardship

Comment: These changes align the hardship distribution rules for 403(b) plans with the rules for 401(k) Plans



Minimum Top-Heavy Allocations

Effective 2024 / Optional

- Defined contribution plans that cover otherwise excludable employees (i.e., those under age 21 or who have not completed a year of service) are not required to provide top-heavy minimum allocations to those early plan entrants.

Starter 401(k) Plan

Effective 2024 / Optional

- Applicable to employers who do not sponsor a retirement plan
- Deferral Only – 401(k) or 403(b)
- Auto-Enrollment between 3% and 15% (no auto-escalation required); with opt out
- Deferral limit is tied to the IRA contribution limits
- Plans will be Safe Harbor/Not Top Heavy

Comment: Starter-401(k) was intended to mirror the IRA contribution limits, but the initial contribution limit for 2024 is \$6,000 and applies the COLA starting in 2025. The IRA limit for 2023 is \$6,500 and may be even higher for 2024, so unless a change is made, the IRA limit will be greater than the Starter-401(k) limit.



Match Contribution on Student Loan Payments

Effective 2024 / Optional

- 401(k), 403(b), SIMPLE and governmental 457(b) plans may treat employees' qualifying student loan payments as elective deferrals for purposes of matching contributions
- Loan debt must be for higher education
- Participant self-certification annually
- Match rate, eligibility and vesting must be the same as match on elective deferrals
- Separate ADP test for employees who receive student loan match
- Student loan payments can't exceed 402(g) limit minus any true elective deferrals



Pre-Death Required Minimum Distributions from Roth Effective 2024 / Mandatory

- Roth accounts in DC plans no longer subject to the pre-death RMD rules
- This aligns pre-death RMD rules with Roth IRA's

Emergency Savings Accounts

Effective 2024 / Optional

- Non-Highly Compensated employees can establish emergency savings account linked to the retirement plan
- Contributions are Roth
- Maximum amount allowed in account is \$2,500 (indexed); can be lower at the employer's discretion
- Auto-enrollment is permitted – up to 3% of pay
- Withdrawals permitted at least once per month; No fee on first 4 withdrawals each year
- Contributions eligible for matching contributions at same rate as elective deferrals under the plan (but made to regular match source, not ESA)





Penalty-Free Withdrawals for Emergencies

Effective 2024 / Optional

- Withdrawals for “unforeseeable or immediate financial needs relating to necessary or personal family emergency expenses”
 - New distributable event in plan
 - Distributions can’t exceed lesser of \$1,000 or vested balance
 - 1 Distribution per calendar year
 - Plan Administrator can rely on participant self-certification
 - Can be repaid within 3 years
 - Unless repaid, no new distributions for 3 calendar years
 - 401(k), 403(b) and 457(b)

Penalty-Free Withdrawals for Domestic Abuse

Effective 2024 / Optional

- 10% early distribution penalty won't apply to distributions to domestic abuse victims
 - New distributable event in Plan
 - Limited to the lesser of \$10,000 (indexed) or 50% of vested benefit
 - Must be made during 1 year period starting on any date the participant is a victim of domestic abuse by a spouse or domestic partner
 - Plan Administrator can rely on participant self-certification
 - Can be repaid within 3 years
 - 401(k), 403(b) and 457(b); doesn't apply to DB or QJSA plans





Accelerated Eligibility for Part-Time Employees

Effective 2025 / Required

- The SECURE Act required that employees with at least 500 hours of service in each of three consecutive years (beginning in 2021) be permitted to make elective deferrals to an employer's 401(k) plan with no requirement for an employer to provide matching or other employer contributions. These part-time employees could become 401(k)-eligible as early as January 1, 2024.
- After December 31, 2024, the eligibility requirement is reduced from three to two years; but it excludes years of eligibility service prior to 2023, and includes 403(b) plans. Under the new rule, part-timers could be eligible as early as January 1, 2025 (does not change previous eligibility in 2024 under the original rule).

LTPT Example

Year	Employee #1 Hours	Employee #2 Hours
2021	600	0
2022	540	250
2023	560	540
2024	Enters Plan as LTPT	670
2025		Enters Plan as LTPT

Spousal Beneficiary RMDs

Effective 2025 / Required

- Spousal beneficiary of an employer-provided plan benefit may elect to be treated as the deceased employee for RMD purposes.
- If the sole designated beneficiary, they can have their distributions determined under the uniform lifetime table
- This brings 401(k), 403(b) and tax-exempt 457(b) plans into sync with IRA rules

Automatic Enrollment & Escalation

Effective 2025 / Required

- 401(k) and 403(b) Plans established after 12/29/2022 must contain Auto Enrollment (including sponsors adopting into a multiple-employer plan)
- 1st year deferral rate between 3% and 10%
- 1% annual auto-escalation up to between 10% and 15%
- Employee can opt out
- 90-day permissible withdrawal feature (making this an EACA type auto enroll)
- Invested in QDIA if employee doesn't make an election
- Exceptions:
 - Plans established prior to 12/29/2022
 - Sponsors with fewer than 11 employees
 - Sponsors who have been in business less than 3 years
 - Governmental, Church and SIMPLE Plans



Catch-Up Contribution Increase at Later Ages

Effective 2025 / Optional?

- Catch-up contributions will be increased to the greater of \$10,000 or 150% of the age 50 catch-up contribution amount for employees who reach the ages of 60, 61, 62, or 63 during the year.

Comment: This is optional in the sense that providing catch-up contributions in general is optional, but these increases are presumably required in plans that do allow for catch-up contributions, but we may need more guidance.

Pension Lump Sum Window Requirements

Effective Pending DOL Issuing Final Regulations

- Defined benefit pension plans that offer temporary lump-sum distribution options (“lump sum windows”) will be required to provide participants with a specialized notice (a model will be issued).
- The special notice must be provided at least 90 days before the first date participants could elect a lump sum.
- Plans will also be required to provide notification of the lump-sum offering to the PBGC and DOL.

Comment: The DOL is also looking at fiduciary standards for annuity purchases associated with pension risk transfers.



Retirement Savings Lost & Found

Mandate to DOL

- The DOL is directed to establish an online searchable database within two years that will allow a participant or beneficiary to search for contact information for plan administrators of plans in which the participant or beneficiary may have a benefit.
- Plans will be required to share information with the DOL to be included in the database.

Fee Disclosures & Other Notices

- The IRS and DOL have been charged with issuing regulations for consolidating various plan notices within the next two years.
- The DOL is looking at improving fee disclosures within the next three years.

Paper Statements

Effective 2026 / Required

- A paper benefit statement must be provided once per year for an individual account, and at least every 3 calendar years for a DB plan
- Participant can opt out of paper statements



Saver's Match

Effective 2027 / Optional

- Instead of a tax credit refund on their return, lower-income retirement savers will be eligible for a government-funded matching contribution to their IRA or retirement plan for 50% of their contributions (with income-level phase out), up to a maximum of \$2,000, reduced by certain distributions taken by the individual.



1042 Elections for S-corporation

Effective 2028 / Optional

- Owners of an S-corporation may defer recognizing taxable income on the sale of company stock to an ESOP that owns at least 30% of the corporation's stock if sales proceeds are reinvested into qualified replacement property.
- However, unlike C- corporations, only 10% of the proceeds of the sale to an S-corporation ESOP may be deferred.

Comment: This continues the legislative trend to encourage ESOPs in S-corporations.

Breaking News: 5500 Form Changes

Effective for Plan Years beginning 1/1/2023

- Plans with under 100 participants can generally file a 5500-SF and avoid an audit by an independent qualified public accountant.
- The participant count was based on the number of active eligible participants (regardless of whether they have a balance) and terminated participants with a balance.
- The participant count will now be based on the number of participants (active and terminated) and beneficiaries with an account balance at the beginning of the Plan Year.

This could affect over 19,000 plans that will no longer need to pay for an audit.



Thank You!

Email | PartnerCommunications@bpas.com





866.401.5272

bpas.com | u.bpas.com

