



The SECURE Act 2.0: What You Need to Know

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The SECURE 2.0 Act of 2022 (the Act) was signed into law by President Biden on December 29, 2022 as part of the Consolidated Appropriations Act of 2023. The bipartisan legislation is a conglomeration of one House and two Senate bills that have been floating around Congress throughout 2022, if not earlier. Designed to expand the nation's retirement plan coverage, with its 90-plus provisions, the Act is the most substantial piece of retirement legislation in many years.

Most of the Act's provisions are intended to enhance coverage and participation in 401(k) and similar-type plans, such as a 403(b), particularly among small businesses that currently do not offer a retirement plan and industries that employ large swaths of part-time workers. There are some other provisions that apply to cash balance defined benefit plans and many others that impact all types of retirement plans.

Highlights of the SECURE Act 2.0

- New "Starter K Plan" allowing employers without a retirement plan to offer a starter 401(k) plan or safe harbor 403(b) plan
- Increased tax credit for new plans
- Enhanced Saver's match that changes existing tax refund to a government matching contribution into the taxpayer's plan
- Side-car emergency savings accounts in defined contribution plans
- Student-loan matching program that treats student loan payments as elective deferrals for purposes of matching contributions
- Higher catch-up limits at age 60, 61, 62 and 63
- Increase age for required minimum distributions (RMD) to age 73 currently and then to age 75 ten years later
- Increase the current qualified longevity annuity contract (QLAC) limits
- Auto-portability provisions
- Establishment of a Retirement Savings Lost and Found
- Expand the Employee Plans Compliance Resolution System (EPCRS)
- Reform the family attribution rules

A Deeper Dive: Provisions that expand retirement plan coverage, facilitate new plans, and increase employee savings.

Provision	Effective	Summary
New Plans Require Automatic Enrollment and Escalation Provisions	Date of enactment	For plan years beginning after December 31, 2024, any 401(k) or 403(b) plan established after December 29, 2022 must contain an automatic enrollment provision and an automatic escalation provision (with employee opt out). These rules do not apply to governmental or church plans or plans sponsored by new and small businesses.
Starter 401(k) Plans	Beginning in 2024	Employers who do not sponsor a retirement plan may implement a deferral-only Starter 401(k) plan, a simplified plan with lower contribution limits.
Saver's Matching Contributions	Tax years beginning after 2026	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.
Catch-Up Contribution Increase at Later Ages	Tax years beginning after 2024	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.
Catch-Up Contributions Roth Requirement	Tax years beginning after 2023	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.
Optional Employer Contributions as Roth	Contributions made after date of enactment	Plans may offer employees the ability to elect some, or all matching or non-elective employer contributions to be characterized as Roth contributions, if contributions are fully vested at the time they are made.
Matching Contributions on Student Loan Payments	Plan years beginning after 2023	401(k), 403(b), and governmental 457(b) plan sponsors may make matching contributions to employees for certain qualified student loan payments made by employees for higher education expenses and treat them as regular matching contributions for nondiscrimination testing purposes.
De Minimis Incentives to Participate	After date of enactment	Currently, matching contributions are the only permitted incentive employers have for encouraging plan participation. After the date of enactment, employers may provide de minimis financial incentives, such as gift cards of a modest amount, provided such incentives are not paid for with plan assets.
Coverage for Long-Service Part-Time Employees	Plan years beginning after December 31, 2024	The original 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).

<p>Plan Based Emergency Savings Accounts</p>	<p>Plan years beginning after December 31, 2023</p>	<p>Sponsors of individual account plans may create emergency savings accounts that permit non-highly compensated employees to make Roth-type contributions to a special savings account within the retirement plan. Emergency savings must be available for withdrawals at least once per month. Contributions may not be made if, or after, the account would exceed \$2,500 (adjusted for inflation after 2024) or a lesser amount defined by the plan sponsor. Employee emergency-savings-account contributions must be eligible for matching contributions at the same rate as elective deferrals under the plan but such matching contributions are not made to the emergency savings account.</p>
<p>Tax Credits for Small Employers</p>	<p>Date of enactment</p>	<p>Currently, employers with fewer than 100 employees that adopt a new retirement plan may qualify for an annual tax credit for up to three years equal to 50% of the administrative cost of establishing the plan, limited to \$5,000. The percentage is increased for 2023 from 50% to 100% for employers with 50 or fewer employees. It also establishes a new tax credit for contributions made by small employers to a newly established defined contribution plan. The new tax credit will be a set percentage of the amount contributed by the employer up to a per-employee cap of \$1,000, excluding contributions to employees with compensation in excess of \$100,000, as indexed. The set percentage is 100% for the year the plan is established and the following year, 75% for the third year, 50% for the fourth year, 25% for the fifth year, and 0% thereafter. The full amount of the new tax credit would be available to employers with 50 or fewer employees, but phases out for employers with 51 to 100 employees.</p>
<p>Retroactive 401(k) Start-Up for Sole Proprietors</p>	<p>Date of enactment</p>	<p>Unincorporated sole proprietors without employees may retroactively adopt 401(k) plans by their (extended) tax return due dates and make retroactive salary deferrals. (Doesn't apply to sole proprietors or partners with employees.)</p>
<p>Retroactive Amendments to Increase Benefits</p>	<p>2024 plan years</p>	<p>Employers may retroactively adopt, by their (extended) tax return due dates, amendments that increase benefits.</p>
<p>Mid-Year SIMPLE Replacement</p>	<p>2024</p>	<p>Employers may terminate their SIMPLE plans and replace them with safe harbor 401(k) plans during the year. Contribution limits are coordinated for the transition/replacement year.</p>
<p>IRA Catch-Ups Contributions Indexed</p>	<p>2024</p>	<p>The \$1,000 IRA catch-up contribution will be indexed for cost of living increases.</p>

A Deeper Dive: Provisions that affect retirement plan distributions

Provision	Effective	Summary
Required Beginning Date Ages	January 1, 2023	The initial age for required minimum distributions (RMDs) increases to age 73 beginning January 1, 2023 for those who turn 72 after December 31, 2022. It increases to age 75 beginning January 1, 2033 for those who turn 74 after December 31, 2032.
No Pre-Death Required Minimum Distributions for Roth	Tax years beginning after December 31, 2023	Pre-death required minimum distributions are not required for employer retirement plan Roth accounts.
Reduced RMD-Related Excise Taxes	Date of enactment	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.
Spousal Beneficiary RMDs	Date of enactment	A spousal beneficiary of an employer-provided plan benefit may elect to be treated as an employee for purposes of RMDs and, if the sole designated beneficiary of the participant's account, have distributions determined under the uniform life table.
Withdrawals for Certain Emergency Expenses	Withdrawals made after December 31, 2023	Certain withdrawals or distributions from some eligible retirement plans (e.g., 401(k) and 403(b) plans) for emergency expenses will not be subject to the 10% tax on early distributions. One emergency-expense withdrawal of up to a maximum of \$1,000 is permissible each year; the participant must be given the opportunity to repay the withdrawal within the following three years. Additional conditions and requirements apply.
Penalty-Free Withdrawals for Cases of Domestic Abuse	Distributions made after December 31, 2023	Plans may permit participants who self-certify that they have experienced domestic abuse within the past year to withdraw a portion of their retirement plan account up to the lesser of \$10,000 as indexed for inflation or 50% of the participant's account. A withdrawal made pursuant to this provision is not subject to the 10% tax on early distributions and the participant has the opportunity to repay the withdrawn amount over a three-year period.
Penalty-Free Withdrawals for Terminal Illness	Distributions after date of enactment	Retirement plan distributions made to a participant who is otherwise eligible for a distribution and is terminally ill (certified by a physician) will not be subject to the 10% tax on early distributions. The distribution may be repaid under rules similar to those for qualified birth or adoption withdrawals.
Permanent Rules for Relief for Qualified Federal Disasters	Disasters occurring on or after January 26, 2021	Previously, only ad hoc relief was provided for retirement plan distributions and loans made in connection with certain federally declared disasters. For disasters occurring on or after January 26, 2021, there is permanent relief permitting up to \$22,000 in qualified disaster recovery distributions that are not subject to the 10% tax on early distributions. These distributions are eligible to be taken into income over three years and may be repaid to the plan. Additionally, the maximum plan loan limit may be increased up to \$100,000 or 100% of the participant's account balance, if less, for any individual who experiences a qualified disaster, and any loan repayment period may be extended by one year.
403(b) Hardships Distributions	2024	403(b) hardship distributions may include qualified non-elective and qualified matching contributions in addition to salary deferrals, plus earnings thereon. Furthermore, participants need not take available loans prior to taking a hardship distribution.

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Small Benefit Cash-Outs and Automatic Portability	Distributions after December 31, 2023	The threshold for a cash-out and automatic transfer to a default IRA is increased to \$7,000. Furthermore, retirement 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.
Fixing the RMD and Lifetime Income Conundrums	Calendar years ending after the date of enactment	The required minimum distribution rules eliminate perceived barriers to the availability of certain common lifetime annuity features, such as period certain guarantees and guaranteed annual increases, with respect to commercial annuities issued in connection with an eligible retirement plan.
Expanded Qualified Longevity Annuity Contracts (QLACs)	Date of enactment	For QLACs purchased after the date of enactment, the 25% account limit is repealed and the permissible dollar amount is increased to \$200,000 and indexed, as well as permitting QLACs to include certain other features.
Employee Hardship Self-Certification	Plan years after the date of enactment	Absent actual knowledge to the contrary, plans will be permitted to rely on a participant's self-certification of eligibility for a hardship withdrawal from a 401(k) or 403(b) plan for the hardship events listed in the regulations, or an unforeseeable emergency distribution from a governmental 457(b) plan. Employers could previously rely on a participant's self-certification as to the amount necessary to satisfy the hardship, but not the actual hardship event itself.
Participant Disclosure Requirements for Lump-Sum Distribution Windows	Pending issue of DOL final regulations	Specialized notices will be required (a model will be issued) to participants being offered a temporary lump-sum distribution option under a pension plan. 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 Pension Benefit Guaranty Corporation and the Department of Labor (DOL).
Repayment of Certain Distributions	Date of enactment	Repayment of qualified birth or adoption distributions must be completed within three years, or the end of 2025, for any prior distribution.

A Deeper Dive: Provisions that affect Pooled Employer Plans (PEPs), Multiple Employer Plans (MEPs) and Groups of Plans (GoPs):

Provision	Effective	Summary
403(b) Plan MEPs and PEPs	2023	403(b) plans will be able to participate in MEPs and PEPs, subject to registration and reporting requirements similar to those that apply to traditional MEPs and PEPs. The statutory exception to the unified plan rule introduced in SECURE 1.0 is extended to cover eligible 403(b) MEPs and PEPs.
PEP Contribution Collection Procedures	2023	The PEP trustee responsibility for collecting contributions and implementing written contribution collection procedures that are reasonable, diligent, and systematic may be assigned to a trustee or any other named fiduciary of the PEP other than a participating employer beginning in 2023.
Retirement Plan Startup Costs Tax Credit	Retroactive to SECURE Act 1.0	Confusion concerning how the tax credit applies to an eligible employer joining an existing MEP or PEP is resolved. Eligibility for the credit is based on the first year in which the MEP or PEP becomes effective with respect to the eligible employer.
GoP Audit Requirement	Date of enactment	Clarified that plans that would have been subject to the audit requirement absent participation in a GoP (i.e., plans with 100 or more participants) are subject to the audit requirement while participating in the GoP.

A Deeper Dive: Additional defined benefit plan-specific provisions

Provision	Effective	Summary
Eliminate Indexing the PBGC Variable Rate Premium (VRP)	Date of enactment	The VRP is indexed each year by a cost-of-living index. The Act eliminates further indexing. Moreover, the VRP is frozen at the rate of \$52 for each \$1,000 of unfunded vested benefits.
Cash Balance Plan Accrual Rules	Date of enactment	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.
Mortality Table Corrections	Valuation dates occurring during or after 2024	IRS mortality tables for determining present values shall be modified to reflect improvements projected by the Social Security Administration.
Annual Funding Notice Changes	Plan years beginning in 2024	The Act modifies the ERISA requirements for the required annual funding notice along with some of the language.
Section 420 Transfers Extended	Date of enactment	The deadline for transferring excess assets in a defined benefit plan to a 401(h) account has been extended from December 31, 2025 to December 31, 2032.

A Deeper Dive: Provisions that simplify and clarify certain rules and administrative concerns

Provision	Effective	Summary
Periodic Paper Benefit Statements	Plan years beginning after December 31, 2025	A paper benefit statement must be provided once per year for an individual account and at least every three calendar years for a defined benefit plan (unless the plan follows the DOL electronic delivery rules or the participant /beneficiary requests electronic statements).
Recovery of Overpayments	Date of enactment	Retirement plan fiduciaries have statutory discretion over whether to seek recoupment of overpayments from participants. The Plan Sponsor is not required to make up overpayments under certain circumstances. In addition, if a plan seeks recovery of overpayments, certain restrictions and employee protections will apply, including no recoupment of interest from participants, limits on recoupment from future benefit payments in excess of 10% of the payments, and notification within three years of the overpayment (except in cases of misrepresentation). Overpayments that have been rolled over and not repaid will still be treated as eligible rollover distributions.
Employee Plans Compliance Resolution System (EPCRS)	Date of enactment	EPCRS expands the ability of plans to self-correct certain failures, including plan loan failures and any eligible inadvertent failure (a failure that occurs in spite of having practices and procedures to comply with the applicable Internal Revenue Code requirement violated).
Safe Harbor Corrections for Automatic Enrollment and Automatic Escalation Failures	2024	The Act offers palatable safe harbor fixes for plans that fail to timely auto enroll employees or escalate salary deferrals.
Retirement Savings Lost and Found	Within 2 years of enactment	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.
Streamline Notice Requirements to Unenrolled Employees	Plan years beginning after December 31, 2022	Plans will no longer need to provide certain notices to employees who have not elected to enroll. Instead, plans will be required to provide an annual notice reminding the employee of eligibility to participate in the plan and include any deadlines to enroll.
403(b) Plan Investments	Date of enactment	403(b) plans are permitted to invest in collective investment trusts, which are often available at a lower cost than mutual funds. However, corresponding changes in applicable securities laws were not included in the Act which means that further legislative action is likely necessary before 403(b) plans may take advantage of this change.

Changes to Family Attribution Rules	2024	Spousal ownership attribution rules will not apply to spouses with separate businesses in community property states. 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.
Top-Heavy Requirements	Plan years beginning in 2024	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 early plan entrants for plan years beginning in 2024.
Expansion of 1042 Elections	2028	Beginning in 2028, 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.

A few Other Tidbits from the IRS and DOL

- The IRS is instructed to issue guidance within two years to improve the rollover process for retirement plans
- The DOL is reviewing fiduciary standards for annuity purchases associated with pension risk transfers
- The DOL is looking at improving fee disclosures within the next three years
- The IRS and DOL have been charged with issuing regulations for consolidating various plan notices within the next two years

We are providing this summary to our clients as a courtesy based on our understanding of the new legislation. We have tried to be as thorough as possible summarizing the provisions we believe are most likely to impact our clients, partners, and services. We reserve the right to update any of the above information above based on our continued review of the legislation and/or clarifying guidance that may be issued. Please feel free to reach out to your BPAS representative with any questions.



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