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SECURE 2.0 – significant changes for employer-sponsored retirement plans start now

Volume 46

Issue 02

February 2, 2023

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Signed into law on December 29, 2022, the SECURE 2.0 Act of 2022 ("SECURE 2.0") makes substantial changes to the retirement plan landscape, requiring sponsors and administrators of employer-sponsored retirement plans to change the way they design and operate their plans.

Background

As described in our December 26, 2022 *FYI Alert*, SECURE 2.0 was enacted as part of the massive $1.7 trillion Consolidated Appropriations Act, 2023 and is generally intended to increase retirement savings for Americans, including those who participate in workplace retirement plans. Many of the provisions of SECURE 2.0 became effective upon enactment (December 29, 2022), while others take effect in future years.

SECURE 2.0 is a consolidation of three bills, the Securing a Strong Retirement Act of 2022, which passed the U.S. House of Representatives on March 29, 2022, and two Senate bills — the Enhancing American Retirement Now (EARN) Act and the Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg (RISE & SHINE) Act — approved by the Senate Finance Committee and the Senate Committee on Health, Education, Labor, and Pensions, respectively, in June of last year. (See our April 28, 2022 *FYI* on the House bill.) The three measures were informally referred to as "SECURE 2.0 bills," as they built upon the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019. (See our December 23, 2019 *FYI Alert* on the original SECURE Act.)

While this *FYI In-Depth* does not summarize every provision of SECURE 2.0, we highlight most provisions of primary significance to plan sponsors. In addition, guidance is needed from applicable governmental agencies for plan sponsors and administrators to implement many of these provisions.

Changes to required minimum distribution rules for plans

SECURE 2.0 changes several rules related to required minimum distributions ("RMDs") as they apply to defined contribution (i.e., 401(k), 403(b), and 457(b) plans) and defined benefit plans.

Increase in the age for RMDs (required change)

In part to reflect improved mortality, the original SECURE Act increased the age used to determine when distributions from retirement plans must commence from age 70½ to 72. SECURE 2.0 extends the RMD age even further. For individuals who attain age 72 between January 1, 2023, and December 31, 2032, the RMD age is 73. For individuals turning age 74 after December 31, 2032, the RMD age will increase to 75.

> **Buck comment.** A technical correction to the law is needed as it is unclear whether the increase from age 73 to age 75 applies to individuals born in 1959.
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> Significantly, SECURE 2.0 did not change the existing requirement for defined benefit pension plans (other than governmental and church plans) to actuarially increase a non-5% owner employee's benefit when that employee continues working after April 1 following the end of the calendar year in which the employee turned 70½. Congress chose to retain the old RMD age of 70½ for purposes of determining when actuarial increases are required to begin.

Reduction in excise tax on certain excess accumulations in retirement plans (required change)

Existing rules impose a 50% excise tax on the payee for a failure to take RMDs. SECURE 2.0 reduces this penalty to 25%, which can generally be further reduced to 10% if corrected (by receiving the missed distribution and paying the 10% excise tax) within a two-year window. These changes are effective for taxable years beginning after December 29, 2022.

> **Buck comment.** Plan sponsors may consider monitoring for RMD failures more closely to facilitate timely corrections that would enable the affected payees to take advantage of the lower 10% excise tax rate.

Roth account distribution rules (required change)

Currently, participants in employer-sponsored retirement plans such as 401(k), 403(b), and governmental 457(b) plans are required to take pre-death distributions from designated Roth accounts. This is contrary to the Roth IRA rules that do not require RMDs to begin before the owner's death. SECURE 2.0 eliminates minimum distributions for years up to and including the year of the employee's death for designated Roth accounts in employer-sponsored plans. This provision is effective for taxable years beginning after December 31, 2023. This rule change does not apply to

distributions that are required for years beginning before January 1, 2024 but are permitted to be paid on or after that date. (For participants with an April 1, 2024, required beginning date, 2023 RMDs would still be required to be taken from designated Roth accounts for the 2023 distribution calendar year – even if paid in 2024).

Qualifying longevity annuity contracts (QLACs)

QLACs are fixed deferred annuities purchased in a qualified defined contribution plan, 403(b) plan, 457(b) plan, or an IRA that are required to commence payments no later than the first of the month after the employee's 85th birthday. They are intended to help protect retirees from outliving their retirement assets. Amounts used to purchase QLACs are not counted as part of the account balance used to calculate RMDs. IRS regulations restricted the amount an individual could pay for a QLAC to the lesser of 25% of their account or $125,000 (as indexed). SECURE 2.0 repeals the 25% limit and increases the dollar limit to $200,000 (as indexed), effective December 29, 2022.

SECURE 2.0 also clarifies that joint and survivor benefits under a QLAC may continue to be paid to a former spouse in the case of divorce, effective for contracts purchased or exchanged on or after July 2, 2014.

Eliminating a penalty on partial annuitization

The regulations under Code Section 401(a)(9) currently provide that if only part of a defined contribution retirement account is used to purchase an annuity contract, none of the distributions from the annuity can be taken into account for purposes of determining whether the distributions from the plan satisfy the RMD rules for the year in which the annuity is purchased. Under SECURE 2.0, a plan can allow a participant to elect to take distributions from the annuity contract into account to satisfy the RMD for the year. The new rule is effective December 29, 2022. The Secretary of Treasury is required to update the relevant regulations accordingly, and until such actions are taken, taxpayers may rely upon their reasonable good faith interpretation of this rule.

Surviving spouse election to be treated as an employee (required change)

Under SECURE 2.0, if a participant dies before the participant's entire benefit is distributed, a surviving spouse beneficiary can elect to be treated as the participant to determine the RMD age and required distribution amount. Previously this election was only available for IRAs, but now it can be applied to qualified retirement, 403(b), and 457(b) plans. This is effective for calendar years beginning after December 31, 2023.

Modification of RMD rules for special needs trusts (required change)

The original SECURE Act limited the ability of beneficiaries of defined contribution plans and IRAs to receive lifetime distributions following the account owner's death. Special rules apply in the case of certain beneficiaries, such as disabled or chronically ill persons. SECURE 2.0 contains a conforming amendment under Code Section 401(a)(9) such that, in the case of a special needs trust established for a disabled or chronically ill beneficiary, a charitable organization can now be designated as a contingent beneficiary of the trust without the trust becoming ineligible for lifetime distributions. This provision is effective for calendar years beginning after December 29, 2022.

Remove RMD barriers for life annuities

The RMD rules are modified to permit increasing annuity payments and eliminate certain other barriers that prevented some common lifetime annuity features from being offered under plans. Commercial annuities issued in connection with any eligible retirement plan (other than a defined benefit plan) will now be able to provide features such as guaranteed annual increases of less than five percent, a refund of any unrecovered premiums paid at the death of the annuitant(s), additional lump sum payment options, and other features. This is effective for calendar years ending after December 29, 2022.

> **Buck comment.** The law codifies many of the rules in the current IRS regulations. This change may increase the willingness of individuals to elect a life annuity under a defined contribution plan (or make a rollover to an IRA annuity more attractive — if IRA providers modify their contracts to offer these types of features). However, an employer plan will still have to address the spousal consent rules if it offers annuities.

Provisions affecting both defined benefit and defined contribution plans

Certain provisions of SECURE 2.0 affect defined benefit and defined contribution plans, including some related to plan distributions.

Updating dollar limit for involuntary cash out distributions

Currently, plans can distribute a participant's benefit without obtaining the participant's consent (or that of the participant's spouse) if the present value of the participant's vested accrued benefit is $5,000 or less. The involuntary cash out limit is increased from $5,000 to $7,000, effective for distributions made after December 31, 2023.

> **Buck comment.** Unless the participant affirmatively makes a rollover election, plans must roll over a former participant's plan benefit into an IRA by default if the involuntary cash out exceeds $1,000. The $1,000 threshold for these rollovers is not changing.

Distributions for individuals with a terminal illness

SECURE 2.0 creates an exception to the 10% early distribution tax for distributions to participants who are terminally ill. For purposes of this exception, an individual is terminally ill if they have been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 84 months or less. If the distributed amount is repaid to the plan within three years, the individual is entitled to a refund of income taxes paid on the distribution amount that is repaid. This change is effective for distributions made after December 29, 2022.

Use of retirement funds in connection with qualified federally declared disasters

SECURE 2.0 provides permanent rules relating to the use of retirement funds in the case of a federally declared disaster. A participant who lives in a federal disaster area and suffers an economic loss by reason of such qualified disaster may take a distribution of up to $22,000 within 180 days after the disaster (or 180 days after December 29, 2022, if later). These distributions are not subject to the

20% mandatory withholding or 10% additional tax on early distributions. The distribution may be repaid to the plan within three years, and ⅓ of the distribution can be included in the individual's taxable income in each year of the three-year period beginning with the year of distribution. Also, a plan sponsor may permit affected individuals to take a larger plan loan (i.e., the lesser of $100,000 or 100% of the participant's vested account balance) and may provide a one-year extension of the loan repayment period. This change is effective for federal disasters occurring on or after January 26, 2021 (other than those for which similar relief was already provided under the Consolidated Appropriations Act of 2021).

Provisions affecting defined contribution plans

Many of the provisions of SECURE 2.0 are aimed at defined contribution plans (i.e., 401(k), 403(b), and 457(b) plans) and are intended to address a host of goals, including increasing retirement plan access, preserving retirement income, and providing for emergency savings and distributions.

Expanding automatic enrollment in defined contribution retirement plans (required change)

Congress clearly understands that automatic enrollment and escalation provisions tend to boost plan participation and savings. Starting with the 2025 plan year, most new 401(k) and 403(b) plans will be required to automatically enroll employees at a deferral rate between three percent and 10% of compensation, with automatic increases of one percent each year until the deferral rate reaches at least 10% (but not more than 15%) of compensation.

Employees must be permitted to elect a different deferral rate or opt-out of contributing to the plan. In addition, the contributions must be invested in a qualified default investment arrangement unless the participants otherwise direct their investment of their automatic contributions. Participants must also be permitted to withdraw the automatic contributions within 90 days of the first automatic enrollment contribution.

Generally excluded from these requirements are existing plans adopted before December 29, 2022, church and governmental plans, plans of employers in existence for less than three years, and small businesses that normally employ ten or fewer employees. This provision is effective for plan years beginning after December 31, 2024.

Coverage for part-time workers (required change)

The original SECURE Act provided that long-term, part-time employees who complete at least 500 hours of service in three consecutive 12-month periods must be allowed to participate in the employer's 401(k) plan by making deferrals into the plan. SECURE 2.0 further improves coverage for long-term, part-time employees by requiring participation after two (rather than three) consecutive 12-month periods with at least 500 hours of service. These rules are also extended to 403(b) plans subject to ERISA. SECURE 2.0 also clarifies that plans must provide a year of vesting service credit for these long-time, part-time employees if they have at least 500 hours of service in a 12-month

period beginning on or after January 1, 2023. This provision is generally effective for plan years beginning after December 31, 2024.

> **Buck comment.** Implementing this change will require substantial administrative steps, such as properly tracking employees and counting hours. While 401(k) plan administrators are already contending with participation by long-term, part-time employees, 403(b) plan administrators will need to understand the requirements that will apply to their plans and take the necessary steps to address them.

Matching contributions on student loan repayments

Employers can help employees burdened with student loan repayments by offering matching contributions even if they do not contribute to their employer retirement plans. Under SECURE 2.0, employers may make matching contributions on qualified higher education student loan repayments made by employees. The rate of matching contributions made on the loan repayments must be the same as the rate of matching contributions that would otherwise have been made on the employee's elective deferrals, and vesting must occur in the same manner for matching contributions made on student loan repayments as for matching contributions made on elective deferrals. Special nondiscrimination rules apply with respect to these matching contributions, and the plan administrator may rely on a participant's certification that the employee is making qualified student loan payments. This change is permitted for contributions made for plan years beginning after December 31, 2023.

Saver's Match

SECURE 2.0 also offers an incentive to increase retirement savings by employees whose income does not exceed certain specified levels. Eligible individuals who contribute to a qualified plan, 403(b) plan, governmental 457(b) plan, or an IRA will receive a federally funded matching contribution ("Saver's Match") that will be contributed directly to the applicable retirement savings vehicle of the individual's choice (other than a Roth IRA or designated Roth account in an employer-sponsored plan). The maximum amount of this match is 50% of the individual's contributions up to $2,000. The matching contribution phases out based on the individual's modified adjusted gross income (e.g., $41,000 to $71,000 for married taxpayers filing jointly). These provisions are effective for tax years beginning after December 31, 2026.

> **Buck comment.** It appears that retirement plans will not be required to accept Saver's Match payments made to its employees. Setting up administrative processes to handle the processing of Saver's Match deposits from the federal government could present administrative challenges. We expect that there will be further guidance issued on this change before 2027.

Small immediate financial incentives for contributing to a plan

Under prior law, matching contributions were the only incentive an employer could offer employees to participate in a 401(k) plan. SECURE 2.0 now enables sponsors of 401(k) plans and 403(b) plans to offer de minimis financial incentives, such as low-dollar amount gift cards, to boost employee participation in the plans. Plan assets may not be used to pay for any de minimis financial incentives. This change is effective for plan years beginning after December 29, 2022.

Catch-ups must be Roth for high-income earners (required change)

Currently, applicable defined contribution plans can offer participants who will have attained age 50 by the end of a calendar year the ability to make "catch-up" contributions to the plan in excess of the limits that would otherwise apply to elective deferrals. The elective deferral limit for 2023 is $22,500, and the age 50 catch-up contribution limit is $7,500. Under SECURE 2.0, catch-up contributions must be made on a Roth (post-tax) basis for employees with social security wages over $145,000 (as indexed for inflation in $5,000 increments) in the prior year, effective for taxable years beginning after December 31, 2023.

> **Buck comment.** The law change may have inadvertently eliminated all catch-up contributions in 2024 (not just requiring those made by high-income earners to be made on a Roth basis, as described above). A technical correction to the law may be needed as a result.
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> Assuming that a technical correction is made, this rule may pose some logistical challenges for payroll in some instances, as it may be difficult to determine whether an employee earned more than the threshold in the prior year in time to properly limit the employee's catch-up contributions starting with the first pay period of the next year.
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> In addition, it appears that, in order to permit catch-up contributions for anyone, the plan must allow those whose compensation exceeded the threshold to make catch-up contributions as designated Roth contributions (which would be consistent with the universal availability rule that generally requires a plan to offer each catch-up eligible participant an opportunity to contribute the same catch-up amount). In other words, an employer will not be allowed to amend its plan to state that those whose pay exceeded the threshold in the prior year will not be permitted to make catch-up contributions to comply with this rule. Consequently, plan sponsors who do not currently offer designated Roth contributions for all their plans may need to amend them to add a Roth feature if they want to offer age 50 catch-up contributions.

Higher catch-up limit to apply at ages 60, 61, 62, and 63 (required change for plans of employers who offer age 50 catch-up contributions)

Under SECURE 2.0, the annual limit on catch-up contributions for employees during the years they attain ages 60 through 63 is increased to the greater of $10,000 or 150% of the applicable catch-up amount for participants who attain age 50. The annual limit on catch-up contributions will be adjusted for inflation starting in 2026. This change is effective for taxable years beginning after December 31, 2024.

> **Buck comment.** Currently, 150% of the age 50 catch-up limit is greater than $10,000, so the limit at ages 60-63 would already be $11,250 (even before cost-of-living increases are applied). Additionally, the elimination of pre-tax catch-up contributions for high-income earners will also apply to these catch-up contributions.

Optional treatment of employer matching or nonelective contributions as Roth contributions

Under SECURE 2.0, sponsors of defined contribution plans may provide participants with the option of receiving employer matching contributions or nonelective contributions on a Roth (post-tax) basis. Matching and nonelective contributions designated as Roth contributions will be included in the participant's income in the year contributed and must be 100% vested when made. This change is effective for contributions made after December 29, 2022.

> **Buck comment.** It appears that it will be the participant's choice to elect to have their employer's contributions made as designated Roth contributions. Those contributions will be included in the participant's income in the year they are made to the plan. It is unclear how employer contributions designated as Roth contributions will be reported for income and employment tax purposes. We expect further guidance on this issue.

Prohibited transaction exemption for automatic portability transactions

Where a default IRA has been established for a participant receiving an involuntarily cash out distribution, this provision allows an "automatic portability provider" to be hired to transfer the funds in the default IRA to the participant's new employer's defined contribution plan. The participant must be given advance notice, may opt out of the service, and must receive another notice after the transaction. This provision is effective December 29, 2023.

Insurance-dedicated exchange-traded funds

Exchange-traded funds ("ETFs"), pooled investment vehicles traded on stock exchanges, are like mutual funds except that the shares can be traded throughout the day rather than being traded only after the market closes. ETFs are widely held as assets in retirement plans and IRAs. The Department of the Treasury ("the Treasury") regulations containing "insurance-dedicated" requirements have prevented ETFs from being made widely available through variable annuities. SECURE 2.0 directs the Treasury to update the regulations under Code Section 817(d) to facilitate the creation of a new type of ETF that can be included as an investment option under variable annuity contracts. This change will be effective for segregated asset account investments made on or after December 29, 2029, and the Treasury Secretary is directed to update the relevant regulations by that time.

Long-term care contracts purchased with retirement plan distributions

Retirement plans will be permitted to distribute a specified amount for the payment of premiums for certain long-term care insurance contracts. The amount permitted to be distributed per year is the lowest of: (1) the amount paid by or assessed to the employee during the year for long-term care insurance; (2) 10% of the participant's vested accrued benefit under the plan; or (3) $2,500 — as indexed for inflation beginning in 2025. Qualified long-term care distributions are not eligible for rollover and are exempt from the additional 10% tax on early distributions (but only if the employee and spouse file a joint tax return if the contract is for the employee's spouse). This provision is effective December 29, 2025.

Limitation of repayment period for qualified birth or adoption distribution

The original SECURE Act allows defined contribution plans to offer in-service distributions to participants who wish to take a qualified birth or adoption distribution of up to $5,000 per child. These distributions are not subject to the 10% early distribution penalty and are treated as rollovers if repaid. Before SECURE 2.0, they could be repaid to the plan at any time to avoid taxation on the distributed amount. SECURE 2.0 puts a cap on the repayment period, providing that the repayment period is limited to three years for distributions made after December 29, 2022. For prior distributions, repayment must be made before January 1, 2026.

Emergency savings accounts linked to individual account plans

A plan sponsor is permitted to offer a pension-linked emergency savings account to non-highly compensated employees under its 401(k), 403(b), or governmental 457(b) plan. Contributions to these accounts must be designated Roth contributions and invested in an interest-bearing account offered by a regulated financial institution designed to preserve the principal. Employers may automatically opt employees into these accounts at no more than three percent of their salary, and the portion of an account attributable to the employee's contribution is capped at $2,500 (or a lower dollar limit set by the plan sponsor). Withdrawals from the account must be permitted at least monthly, and fees cannot be charged for the first four withdrawals made from the account in a plan year. Employers must make matching contributions on these contributions at the same rate as other elective contributions under the plan. This change is effective for plan years beginning after December 31, 2023.

Withdrawals for emergency expenses

SECURE 2.0 includes several provisions that permit participants to withdraw money from their defined contribution plan when necessary. For example, plans can permit distributions of up to $1,000 to plan participants for certain emergency expenses without the additional 10% tax that generally applies to early distributions. Emergency personal expenses are unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses. Only one emergency distribution is permitted annually, and the participant can repay the distribution within three years. The frequency and dollar amount limits on emergency distributions apply across all plans maintained by the employer (on a controlled group basis). No further emergency distributions are permitted during the three-year repayment period unless the previous distribution has been fully repaid or the participant has contributed at least an amount equal to the amount of the previous distribution that has not been repaid. A plan administrator may rely on a written certification from a participant that they meet the requirements of the emergency distribution. This new rule is effective for distributions made after December 31, 2023.

Withdrawals in case of domestic abuse

Plans can permit participants who self-certify that they are victims of domestic abuse to obtain a withdrawal in an amount not to exceed the lesser of $10,000 (indexed for inflation) or 50% of the participant's vested account. (The limit must be applied across all plans of the employer and its controlled group.) An eligible distribution to a domestic abuse victim is not subject to the additional 10% tax on early distributions. A participant can repay the withdrawn amount within three years and is

eligible for a refund of income taxes paid on the amount of the distribution that is repaid. This change is effective for distributions made after December 31, 2023.

Hardship withdrawal rules for 403(b) plans

SECURE 2.0 revises the hardship rules for 403(b) plans to correspond with the rules that already apply to 401(k) plans. Under existing rules, 403(b) plans cannot allow participants to take hardship withdrawals of post-1988 earnings on salary deferrals, qualified nonelective contributions (QNECs), and qualified matching contributions (QMACs). SECURE 2.0 permits 403(b) plans to allow hardship withdrawals from a participant's entire salary deferral, QNEC, and QMAC accounts (including earnings), and the participant will not be required to take a loan prior to receiving a hardship distribution. This change is effective for plan years beginning after December 31, 2023.

Deemed hardship distribution certification

The administrator of a 401(k) or 403(b) plan that offers hardship withdrawals may now rely on the participant's certification that the distribution is (1) on account of an immediate and heavy financial need and (2) not more than the amount required to satisfy such financial need. This is effective for plan years beginning after December 29, 2022.

> **Buck comment.** The rules regarding hardships have changed in recent years and have changed again under SECURE 2.0. Plan sponsors may want to review the hardship provisions in their plans to determine if changes to plan terms and administration are warranted considering the new developments.

Deferral of tax for certain sales of employer stock to employee stock ownership plan (ESOP) sponsored by S corporation

Code Section 1042 currently provides for the deferral of gains on the sale of non-publicly traded shares of a domestic C corporation to an ESOP if the proceeds are reinvested in certain qualified property, provided that the ESOP owns at least 30% of the corporation's stock after the sale. SECURE 2.0 expands the deferral of gains to shares of stock in an S corporation, provided that no more than 10% of the gain is deferred. The provision is effective for sales after December 31, 2027.

Certain securities treated as publicly traded in case of ESOPs (required change)

An ESOP, defined in Code Section 4975(e)(7), is a defined contribution plan designed to invest primarily in qualifying employer securities, typically publicly traded and tradeable on established security markets. SECURE 2.0 relaxes this requirement to permit certain stocks not traded on an exchange that meet certain requirements to qualify as publicly traded. This will enable companies whose stock is traded on non-exchange markets to treat their stock as publicly traded. This, in turn, allows those companies to offer ESOPs to their employees. This provision is effective for plan years beginning after December 31, 2027.

Provisions affecting defined benefit plans

While much of SECURE 2.0 focuses on defined contribution plans, several provisions specifically impact defined benefit plans.

Corrections of mortality tables

For valuation dates occurring in 2024 and later, the mortality improvement rates used by the IRS for purposes of determining the contributions required by a defined benefit plan to satisfy ERISA's minimum funding requirements will not assume future mortality improvements at any age that are greater than 0.78%. This change is effective as of December 29, 2022.

Information needed for financial options risk mitigation (lump sum window notice) (required change)

Pension plans sometimes provide for a "lump sum window," a period during which participants or beneficiaries may elect to receive a lump sum payment rather than monthly payments. Under SECURE 2.0, plans must provide a lump sum window notice not later than 90 days before the first date lump sum elections may be made. The notice must state, among other things, how the lump sum is calculated, the amount that otherwise would be payable at the participant's normal retirement age, the amount currently payable as an annuity, that a commercial annuity may provide a smaller annuity amount and other ramifications (tax, financial, etc.) of electing a lump sum. In addition, the plan sponsor must notify the DOL and PBGC 30 days before the date the lump sum window begins and provide the number of participants and beneficiaries eligible, the length of the window period, how the lump sum is calculated, and samples of notices that were provided to participants and beneficiaries. Finally, no later than 90 days after the lump sum window closes, the plan sponsor must provide the DOL and PBGC with a report on how many individuals took the lump sum. The DOL (in consultation with the IRS) is required to publish regulations on this subject by no earlier than December 29, 2023, and this rule must be made effective within one year after final regulations are issued.

Defined benefit annual funding notices (required change)

SECURE 2.0 updates the content requirements of defined benefit annual funding notices to include more detailed information on plan assets, liabilities, and funded status, along with other information. These changes are effective for plan years beginning after December 31, 2023.

Cash balance (required change)

SECURE 2.0 allows cash balance plans that provide variable interest crediting rates to test for backloading under Code Section 411(b) by assuming that a reasonable projection of the variable interest crediting rate with a six percent cap will apply in the future. This provision is effective for plan years beginning after December 29, 2022.

Termination of variable rate premium indexing (required change)

SECURE 2.0 ended the indexing of PBGC variable rate premiums so that there are no more automatic increases after 2023. Any future increases in the variable rate premium will require a law change. Note, however, that the per-participant cap on the variable rate premiums will continue to be indexed. While this provision is effective December 29, 2022, the practical effect is that no indexing will occur after 2023.

Enhancing retiree health benefits in pension plans

SECURE 2.0 extends the deadline for completing a qualified transfer of excess pension assets from an overfunded pension plan to a health benefits account or applicable life insurance account under the plan for an additional seven years, from December 31, 2025, to December 31, 2032. SECURE 2.0 also allows for certain de minimis transfers. This provision is effective December 29, 2022.

Provisions affecting plan correction procedures

For the first time, Congress has weighed in on plan corrections by providing statutory correction provisions. While the IRS and DOL correction programs are still applicable, they may be modified to conform with SECURE 2.0.

Recovery of retirement plan overpayments

SECURE 2.0 addresses overpayments from retirement plans, making clear that plans are not required to recoup inadvertent overpayments from participants and beneficiaries in most cases. It provides that a plan can reduce future payments to correct an overpayment or seek recovery from the person responsible for it. Several new rules apply when recouping overpayments from participants and beneficiaries. For example, a plan cannot seek recoupment of past overpayments to a participant from any beneficiary of the participant, including a spouse or former spouse. In addition, a plan cannot seek recoupment if the first overpayment occurred more than three years before the participant or beneficiary is first notified in writing of the error, except in cases of fraud or misrepresentation. These new rules are effective as of December 29, 2022.

> **Buck comment.** Overpayments are a common failure seen in retirement plans, and plan sponsors should carefully consider all correction options under the IRS's Employee Plans Compliance Resolution System (EPCRS) program as modified by SECURE 2.0. Plan sponsors also should administer corrections in a non-discriminatory and uniform manner. As a result, it is important to understand that when applying a correction approach to a participant, the same correction approach may need to be applied to similar situations in the future.

Expansion of EPCRS

EPCRS is expanded to cover any "eligible inadvertent failure" and allows more types of errors to be self-corrected, including plan loan failures. Failures can be self-corrected at any time (regardless of the significance of the failure) unless the failure was first identified during an IRS audit or the self-correction is not completed within a reasonable period after the failure is identified. The IRS is directed to issue additional guidance by December 29, 2024, which will include required correction

methods for eligible inadvertent failures, along with general correction principles if a correction method is not specified. This change is effective December 29, 2022.

> **Buck comment.** Plan sponsors should understand these new EPCRS rules and consider how to apply them, as this expansion of EPCRS may significantly ease the correction process.

Safe harbor for corrections of employee elective deferral failures

SECURE 2.0 expands an existing safe harbor IRS correction procedure for addressing a plan's failure to implement an automatic enrollment or escalation feature or offer an affirmative election opportunity to an eligible employee. The safe harbor generally allows a plan to correct these failures within 9½ months after the end of the plan year in which the error was first made (or by the last day of the month following the month in which the employee notifies the plan of the error, if earlier) by prospectively implementing the automatic enrollment or automatic escalation feature or by allowing the employee to make an affirmative election within this correction period. Employers are still required to provide matching contributions (adjusted for earnings) on the deferrals the employee could have made to the plan had the failure not occurred. SECURE 2.0 also clarifies that the safe harbor can be applied even if the participant has terminated employment (which was not the case under the existing rules). The safe harbor is effective after December 31, 2023.

Administrative provisions

Plan sponsors have an extended due date for amending their plans to comply with SECURE 2.0, as described below.

2025 amendment deadlines for SECURE 2.0 and other recent legislation

Plan amendments to comply with SECURE 2.0 are due by the last day of the first plan year that begins on or after January 1, 2025 (or January 1, 2027, for governmental and applicable collectively bargained plans), provided the plan operates in accordance with the applicable requirements when they become effective.

SECURE 2.0 also provides the same amendment deadline for amendments related to the SECURE Act of 2019, CARES Act, and Taxpayer Certainty and Disaster Tax Relief Act of 2020.

In closing

In response to SECURE 2.0, plan sponsors must assess their retirement plans to determine which required provisions apply to them. It also is an appropriate time for plan sponsors to re-evaluate the desired goals of their retirement programs and determine if the optional provisions of SECURE 2.0 can be utilized to enhance outcomes. We expect additional regulatory and agency guidance on

SECURE 2.0 and will continue to analyze this legislation and guidance and provide further information as appropriate.

Upcoming webinar

Register for Buck's February 22 webinar "*SECURE 2.0 | Turn your defined contribution plan into a more effective retirement vehicle*."

We'll discuss new opportunities to enhance your plan and investment design and how to engage participants so they make informed decisions regarding their future financial wellbeing.

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