



# WEBINAR

*Secure Act 2.0: What Plan Sponsors Must Do,  
What They May Do, and When They Need to Do It*

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## Your Host & Presenter



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## Who's Going to Be in Charge at DOL?

- Secretary Walsh resigned to head up the hockey players' union.
- Deputy Secretary Julie Su is acting Secretary—she has been nominated by President Biden for Secretary.
- Nomination controversial—when head of the labor agency in California, oversaw program implementing so-called ABC test for independent contractor status, and oversaw programs that experienced billions in fraud.
- Her nomination reported from HELP Committee on party-line vote—some moderate Democrat senators are expressing reservations.
- She can only lose the support of one Democrat senator...stay tuned!
- Retirement plans not a major issue in her past, so likely to defer to Assistant Secretary Gomez?



## Worth the Wait! SECURE Act 2.0 Overview

- SECURE Act 2.0 included in the Consolidated Appropriations Act, 2023, became law on December 29, 2022.
- It includes more than 90 provisions that will affect almost all private sector retirement arrangements—effective dates vary, ranging from immediately effective to 10 years from now.
- Here we're going to focus on the things that are likely to matter most to plan sponsors over the next three years.
- Plan amendments: Conforming amendments may be made by the last day of the first plan year beginning on or after January 1, 2025, if the plan operates in accordance with those amendments.



## Optional Matching Based on Student Loans

- For plan years beginning after December 31, 2023, plan sponsors can amend their plan documents to permit employer matching contributions to the plan based on “qualified student loan payments” (QSLP).
- A QSLP is broadly defined as any indebtedness incurred by the employee solely to pay higher education expenses of the employee.
- The employer can rely on an employee certification of payment (annually, retroactive).
- The match must be the same as for participant elective deferrals.
- The discrimination testing can be done on the basis of all participants or just those matched for QSLPs.



# Auto-Enrollment and Auto-Escalation Mandatory for New 401(k)s and ERISA 403(b)s

- For plan years beginning after December 31, 2024, newly established 401(k) and private sector 403(b) plans must automatically enroll their eligible employees and provide for annual automatic deferral increases.
- New and very small employers are excepted (discussed later).
- Initial deferral rate must be at least 3% of compensation, but not more than 10%.
- Each year thereafter, the deferral rate must be increased at least 1% per year—to at least 10%, but no more than 15%.
- Employees can opt out of deferring and/or change their deferral rates.





## Mandatory Automatic Enrollment Continued...

- Defaulted participants must be invested in a QDIA (Qualified Default Investment Alternative) as defined in DOL regulations.
- Mandate applies for plan years beginning after December 31, 2024 (i.e. January 1, 2025 for a calendar year plan).



# Exceptions to Mandatory Automatic Enrollment

- In addition to pre-12/29/22 plans, the new mandate does not apply to:
  - Governmental and church plans.
  - New businesses: The requirement will not apply until a new business has been in existence for more than three years.
  - Small businesses: The requirement will not apply until one year after the taxable year in which the employer had more than 10 employees.
  - MEPs and PEPs: The requirement will not apply to the MEP or PEP as a whole, but it will apply to adopting employers as if they were adopting a single employer plan after the enactment date.



# Allowing Financial Incentives for Participation

- Previously, financial incentives (such as gift cards in small amounts) are likely prohibited even though they might motivate employees to participate in plans.
- Allows sponsors of 401(k) and 403(b) plans to offer de minimis financial incentives, not paid for with plan assets, such as low-dollar gift cards, to boost employee participation.
- Effective immediately (plan years beginning after enactment).



# Accelerate Long-Term Part-Time Employees

- Original SECURE Act (1.0) required 401(k) plans to include long-term, part-time workers (at least 500 hours and three consecutive years) in the plans for purposes of deferrals (but did not require employer contributions or matches).
- SECURE Act 2.0 reduces the three-year requirement to two years effective for plan years beginning after December 31, 2024.
- SECURE Act 2.0 also extends the long-term, part-time coverage rules to ERISA 403(b) plans effective for plan years beginning after December 31, 2024.
- Start talking to your recordkeepers early and often—lots of administrative issues to resolve.



## Increase Catch-Up Contribution Levels

- Increases the limits on catch up deferrals for participants ages 60, 61, 62, and 63 for years after December 31, 2024.
- 2021 catch up deferral limit was \$6,500. Increased to the greater of:
  - \$10,000, or
  - 150% of the 2024 standard deferral limit (i.e., if the \$6,500 limit goes up due to inflation between now and 2024, the new cap is 150% of the higher number).
- Specifically, the higher limit is available to a “participant who would attain age 60 but would not attain age 64 before the close of the taxable year.”





# Mandatory Roth Treatment For HCE Catch-Ups

- Catch up contributions from employees with compensation in excess of \$145,000 (indexed for inflation going forward) must be treated as Roth contributions.
- Effective for tax years beginning after December 31, 2023.



## Other Roth Options and Issues:

- Optional, effective immediately: Defined contribution plans can allow participants to elect to receive employer contributions on a Roth basis.
- Optional, effective immediately: SIMPLE and SEP IRAs can accept Roth contributions and allow employers to offer participants the ability to treat contributions as Roth.
- RMD Change, effective tax years beginning after December 31, 2023: The RMD rules for Roth accounts in retirement plans are conformed to the Roth IRA rules. RMDs are not required to begin until the death of the participant.



# Optional Emergency Savings Accounts

- Complicated new provision—10% of the entire text of the law. Will plan sponsors want to offer it?
- Effective for plan years beginning after December 31, 2023, individual account plans may offer “pension-linked emergency savings accounts” to their non-highly compensated eligible employees.
- The savings account can only accept employee deferrals and those deferrals are treated as Roth contributions.
- The arrangement can either be affirmative enrolled or automatically enrolled. The contribution rate for automatic enrollment cannot exceed 3%.



## Emergency Savings Accounts Continued...

- Participating employees can contribute to the savings account until the portion of the account attributable to the contributions reaches \$2,500 (adjusted for cost-of-living) or a lower amount stated in the plan.
- The savings contributions are treated as elective deferrals for purposes of matching contributions. A plan sponsor must match at the same rate as for elective deferrals. However, matching contributions are first allocated to the elective deferrals. Only after that would the savings deferrals be matched.
- The matching contributions on savings must be put in the plan's matching account (and not in the savings account).



## More on Emergency Savings Accounts...

- A plan must allow for withdrawals at least once per month and the distributions must be made as soon as practicable after a request.
- Plans cannot charge withdrawal/distribution fees for the first 4 withdrawals in a plan year. For additional withdrawals in a plan year, a reasonable fee can be charged.
- It appears that, for income tax purposes, withdrawals will be treated the same as withdrawals from any Roth accounts. However, the Code §72(t)(2) additional tax on early distributions will not apply to withdrawals.





## Still More on Emergency Savings Accounts...

- The emergency savings account must be invested in an interest-bearing account or, at the option of the plan sponsor, in an investment product that:
  - is designed to maintain the dollar value of the invested amount,
  - bears a reasonable rate of return, and
  - is issued by a State- or Federally-regulated financial institution.
- Many specific participant disclosure requirements.
- State laws that would conflict with the abilities of plans to institute the savings arrangements are preempted.



## And, Finally, Emergency Savings Accounts...

- Upon termination of employment by the participant, or termination of the savings accounts by the plan sponsor, the plan shall allow:
  - ✓ At the election of the participant, for transfer of the account into another Roth account of the participant in the plan; or
  - ✓ For any amounts not so transferred, to allow the participant to withdraw the account balance.
- While not explicit in the Act, it appears that any amounts withdrawn under this termination provision would be eligible to be rolled over.



## Increase in Age for RMDs

Under current law, the law requires minimum distributions beginning at age 72. The Act further increases the ages.

- If a person attains age 72 after December 31, 2022, the new RMD beginning age is 73.
- For a person who attains age 74 after December 31, 2032, the RMD beginning age will be 75.



## Other RMD Provisions

- Reduction in excise tax: The penalty for failure to take RMDs is reduced from 50 to 25 percent. Further, if a failure to take a RMD from an IRA is corrected in a timely manner, the excise tax is further reduced from 25 to 10 percent. The change is effective for tax years beginning after December 31, 2022.
- Spousal benefits: A surviving spouse can elect to be treated as the deceased employee for purposes of the RMD rules. The provision is effective for calendar years beginning after December 31, 2023.
- RMDs and annuities: The Act also include provisions to better coordinate the application of the RMD rules with the use of annuities for guaranteed retirement income.



## Emergency Funds Provisions

- Terminal illness: Waives additional 10% early withdrawal tax for a distribution to a terminally ill individual. Effective immediately.
- Victims of domestic violence: Plans may permit participants who self-certify that they experienced domestic abuse to withdraw the lesser of \$10,000 (indexed for inflation), or 50% of account. Waives 10% early distribution tax, permits repayment over 3 years. Effective for distributions made after December 31, 2023.
- Immediate financial needs: Waives 10% early distribution tax for once-per-year up to \$1,000 distribution for certain personal or family emergency expenses. Can repay over 3 years. Effective for distributions made after December 31, 2023.





# Forced Distributions and Automatic Rollovers

- Force Out limit increased to \$7,000: Under current law, plans may transfer former employees' retirement accounts from a retirement plan into an IRA if their balances are between \$1,000 and \$5,000 (often referred to as a force-out rollover) and the participant does not elect otherwise. The limit is increased from \$5,000 to \$7,000, effective for distributions made after December 31, 2023.
- Auto-Portability: The Act permits a retirement plan service provider to provide plans with automatic portability services that transfer the money in the rollover IRA to a participant's new plan. This provision is effective for transactions on or after December 28, 2023.



## Reduced Disclosure Requirements for Unenrolled Employees

- Under current law, employees eligible to participate in a retirement plan are required to receive a broad array of notices. The Act generally eliminates those requirements.
- However, plans are required to send eligible employees:
  1. A copy of the SPD when the employee is originally eligible and any other required notices related to eligibility;
  2. an annual reminder of eligibility to participate and the election deadlines; and
  3. any required document requested by the participant.
- This provision is effective immediately.



## Biggest Swings and Misses in the New Law:

- Errors and Omissions: Putting together 90+ complicated provisions on a deadline requiring bipartisan agreement is not a recipe for perfection. Mistakes were made, and opportunities missed.
- CITs in 403(b)s: Good News—the tax law barrier to allow 403(b)s to invest in collective trusts was removed. Bad News—securities law barrier was not removed, so CITs are not exempt securities in 403(b)s as they are in 401(k)s. Can't use CITs in 403(b)s yet.
- Missing Participants: By 12/29/2024, DOL must create a searchable database for participants to use to locate administrators of ERISA retirement plans in which the individual was a participant or beneficiary. Does nothing to address immediate problems of fiduciary process or current DOL enforcement concerns.



# Questions?

# Contact Your Host & Presenter

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