



# KPMG report: Summary and observations of tax provisions under SECURE Act 2.0

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The “Consolidated Appropriations Act of 2023” (H.R. 2617) was signed into law on December 29, 2022, and includes several provisions building upon the “SECURE Act” enacted in 2019. These provisions, collectively referred to as SECURE Act 2.0 (the Act), bring in a long list of changes and many new benefits and features related to qualified retirement plans and individual retirement arrangements (IRAs). Although most of the changes are narrow in scope and address particular issues raised by the previously existing rules, there are more than 80 provisions addressing all types of qualified retirement plans including section 401(k) arrangements, section 403(b) plans, section 457(b) plans, and IRAs.

The following discussion summarizes some of the more significant and broadly applicable changes, particularly as to private employers, while then listing the other provisions of SECURE Act 2.0 that address more specific issues. Effective dates are also noted explicitly as the many different provisions are applicable at varying times—some immediately while others not until 2024 or beyond. Although for readability and efficiency this article explores only the most broadly applicable provisions, employers and practitioners are encouraged to review all the SECURE Act 2.0 provisions (listed below) to determine if any may apply to a particular arrangement or otherwise need further exploration.

## Required minimum distributions (RMD)

### Changes to RMD beginning date

Participants in retirement plans, such as a 401(k) plan or an IRA, are required to take RMDs after a certain age. The Act raises the required beginning age for RMDs from age 72 in 2022 to age 73 in 2023. The age will be raised again to age 75 in 2033.

#### KPMG observation

The retirement age was raised to age 72 in the first Secure Act. The delay in raising the required minimum age to age 75 appears to be due to the significant revenue cost, which occurs whenever the beginning date is raised.

**Effective date:** These changes apply to distributions required to be made after December 31, 2022, for individuals who attain age 72 after 2022.

### Changes to penalties for failures to take an RMD

Taxpayers are subject to an excise tax for failure to take an RMD from their retirement plans. The Act reduces the penalty to 25% from the previous rate of 50%. However, if the taxpayer properly corrects the error within two years, which includes taking a distribution and submitting a tax return reflecting the tax on the income, the penalty is further reduced to 10%.

#### KPMG observation

The 50% tax was a significant penalty for a requirement that can be missed inadvertently and may seem complicated. The ability to correct an inadvertent error for a smaller excise tax helps reduce the sting in this situation.

**Effective date:** The change for penalties applies to tax years beginning after December 29, 2022.

## RMDs for ROTH 401(k) only upon death

The Act eliminates RMDs for ROTH accounts in employer plans, such as a 401(k) plan, prior to a participant's death.

### KPMG observation

ROTH IRAs have not been required to take RMDs until death. This change in the Act allows ROTH accounts in employer plans to have the same tax treatment and delay of RMDs until death.

**Effective date:** This change is effective for tax years after 2023. However, this does not apply to 2023 RMDs which must still be paid in 2023 or early 2024.

## Surviving spouse can use decedent age for RMD

The Act allows a surviving spouse to elect to be treated as the deceased employee for purposes of the RMD rules.

### KPMG observation

This change benefits a surviving spouse that inherits an account from a younger spouse. This allows a surviving spouse to use the decedent's age to delay the RMD until the original start date when the decedent would have been required to take a distribution.

**Effective date:** Applies to calendar years beginning after December 31, 2023.

# Auto enrollment and auto escalation required for 401(k) plans

The Act requires 401(k) plans to automatically enroll employees, but employees must be allowed to opt-out of plan participation within 90 days. The plan must require at least a 3% initial deferral, but no more than a 10% initial deferral. The plan must automatically increase the participant's elective deferral (subject to opt out) each year by 1% up to a total maximum of 10%, but no more than a total deferral of 15%.

There are several exceptions to this new required automatic provision. The Act provides that the following are exempt from these provisions:

- Plans in existence before December 29, 2022
- Small businesses with 10 or fewer employees
- A new business that is been in existence for less than three years
- Church plans
- Governmental plans

### KPMG observation

Auto-enrollment has been an option allowed for 401(k) plans, but the requirement to auto-enroll and auto-escalate is a significant change. The Act provides significant exceptions to the rule, specifically

for plans already in existence. Given the extensive excepted plans, many employees will move from employee plans with an auto-enrollment and/or auto-escalation feature to a plan without one or both of those features (or vice versa), increasing the need for early and effective employee communication.

**Effective date:** Applies to plan years starting in 2025.

## Mandatory ROTH (but increased limit on) catch-up contributions

Employees aged 50 and older are allowed to make catch-up contributions to their 401(k) plan (up to \$7,500 for 2023). The Act allows employees aged 60-63 to make increased catch-up contributions. This increased catch up is equal to the greater of \$10,000 or 150% of the age 50 catch up amount. This age 60-63 increased catch up will be indexed annually after 2025. But all catch-up contributions will now need to be made on a ROTH basis, except for employees with compensation of \$145,000 or less.

### KPMG observation

The change to mandatory Roth contribution treatment may surprise some employees. In addition, a plan that does not currently offer Roth contribution treatment may need to work with its plan administrator to continue to accommodate catch up contributions. But although the additional increase has a limited 4-year period for an individual, it may help a participant save some additional amounts for retirement.

**Effective date:** The requirement that catch up contributions be made on a Roth basis applies to tax years after 2023. The age 60-63 increased catch up contribution applies to tax years after 2024.

## ROTH matching and nonelective contributions

Employer matching contributions and nonelective contributions have been required to be contributed on a pre-tax basis. The Act permits employers to allow an employee the choice of having the contribution treated as either a pre-tax contribution or ROTH contribution.

### KPMG observation

Allowing an employee a choice to receive employer contributions to a ROTH account can create a withholding issue. The contribution is currently taxed and subject to withholding. If an employer makes ROTH matching contributions every payroll period over the course of a year, there may not be as significant an impact if the withholding is taken from other wages. However, if a sizeable discretionary match or nonelective contribution is made only once a year, the application of the withholding to the employee's other wages may eliminate an employee's paycheck or there may not even be enough other wages to withhold against. Employers may take this into consideration when

determining whether to amend a plan to allow this choice, or to make more periodic discretionary employer contributions.

**Effective date:** This change is effective for tax year beginning after December 31, 2023.

## Matches of student loan payments

The Act allows an employer to make 401(k) matching contributions based on employee qualified student loan payments. “Qualified student loan payments” include (up to the section 402(g) limit) payments on any debt incurred by the employee to pay qualified higher education expenses of the employee. A plan can perform nondiscrimination testing separately for the student loan payment matching contributions.

### KPMG observation

In 2018, the IRS issued a private letter ruling to a taxpayer allowing an employer to make an employer contribution on behalf of employees based on those employees’ student loan payments. However, the IRS indicated that the contributions were not matching contributions since the contributions were not made with respect to elective deferrals under section 401(k). The treatment as employer contributions created significant issues with nondiscrimination testing such that most employers could not implement the concept into their plans. The Act now permits these types of contributions to be treated as matching contributions that can be treated separately from other employer contributions for purposes of nondiscrimination testing.

**Effective date:** These contributions can be made for plan years after December 31, 2023.

## De minimis financial incentives for employee participation in a retirement plan

Employers may now provide employees de minimis financial incentives to participate in a 401(k) plan or 403(b) plan. Historically this type of employee reward for participation (other than a matching contribution) has been prohibited under the contingent benefit rule. The permitted de minimis financial incentive must be provided outside the plan, meaning it must not be paid from plan assets.

### KPMG observation

What type of reward will constitute a “de minimis” financial incentive has not been defined. Legislative history contemplates a gift card or a limited cash payment, but doesn’t provide further guidance. Because what is “de minimis” is often in the eye of the beholder, employers may want to wait until further Treasury/IRS guidance before implementing a program.

**Effective date:** This is an elective provision that applies for plan years beginning after December 29, 2022.

# Special withdrawal provisions

SECURE Act 2.0 contains a series of special early withdrawal provisions, generally intended to allow limited withdrawals due to certain defined circumstances to avoid the 10% early withdrawal penalty and, in some cases, to be recontributed by the participant to the plan if done so by a prescribed deadline. The following is a list of the new exceptions added by SECURE Act 2.0.

- *Personal Emergency* – Permits withdrawal of up to \$1,000 per year to address personal or family financial emergencies and may be recontributed by the participant to the plan within three years of receipt. No further emergency distributions may be made during the three-year repayment period unless and until the initial emergency distribution is repaid. Effective for distributions made after December 31, 2023.
- *Domestic Abuse* – Permits withdrawal of greater of \$10,000 (indexed) or 50% of account balance by a participant that self-certifies that the participant has experienced domestic abuse and may be recontributed by participant to plan within three years of receipt. Effective for distributions made after December 31, 2023.
- *Qualified Federally Declared Disasters* – Permits withdrawal of up to \$22,000 (indexed) for individuals affected by qualified federally declared disasters. These distributions are considered gross income over three years and can be repaid by the participant to the plan. Additionally, amounts distributed before the disaster to purchase a home can be recontributed, and a plan may provide for a larger amount to be borrowed by affected individuals and for additional time for repayment of plan loans owed by affected individuals. Effective for disasters occurring on or after January 26, 2021.
- *Terminal Illness* – Eliminates early withdrawal tax penalty for a distribution to a participant with a terminal illness, defined as a doctor-certified illness that is expected to result in death within seven years. The participant may recontribute the distribution within three years of receipt. Effective for distributions made after December 29, 2022.
- *Payment for Long-Term Care Insurance* – Permits withdrawal of up to \$2,500 per year for the payment of premiums for certain specified long term care insurance contracts meeting certain quality requirements. Effective December 29, 2026.
- *Modification of Hardship Withdrawal Procedures* – Codifies certain self-certification procedures to permit participants to self-certify the occurrence of a financial hardship event.
- *Modification of Qualified Birth and Adoption Distribution rules* – Restricts the recontribution to the plan of a qualified birth and adoption distribution to three years after the distribution was made. Effective retroactively to address previously made distributions.

## KPMG observation

Although each is well-intentioned, the separate withdrawal provisions will increase the level of complexity in communicating and administering distribution options if adopted in full by a plan. Employers may want to consider how the exceptions will be communicated and then administered by the plan (including any required substantiation) before committing to any particular combination of distribution options.

**Effective dates:** See the specific provision summarized above.

# Modifications to required 401(k) plan eligibility for long-term part-time employees

The original SECURE Act contains provisions requiring a 401(k) plan to offer eligibility for elective deferrals to certain long-term part-time employees, originally defined as an employee earning at least 500 hours of service for three consecutive years. The provision doesn't require that matching contributions or discretionary employer contributions be made on behalf of these participants, but if those types of contributions are made does provide special vesting rules based on the 500 hours requirement. SECURE Act 2.0 shortens the time period for identifying long-term part-time employees to two consecutive years of at least 500 hours of service. In addition, SECURE Act 2.0 modifies the SECURE Act provision to provide that only hours of service from 2021 must be considered, including for purposes of vesting service (in contrast to the position taken in certain interim Treasury-IRS guidance addressing the original SECURE Act).

## KPMG observation

SECURE Act 2.0 also extends this provision to 403(b) plans so employer sponsors of those arrangements will need to determine how to timely identify affected employees to permit participation in the 403(b) plan.

**Effective dates:** This change applies to plan years beginning after December 31, 2024, and the requirements to include long-term part-time workers are mandatory for qualified retirement plans with a 401(k) feature and 403(b) plans.

# Emergency savings accounts

Qualified account balance retirement plans will now be permitted to offer non-highly compensated employees (NHCEs) an emergency savings account to operate in tandem with their other benefits under the plan. Employee contributions are capped at \$2,500 (as indexed for inflation) though may be set lower. An NHCE may be automatically enrolled in the arrangement but for no more than 3% of their salary. If a NHCE becomes an HCE, then contributions to the emergency savings account must stop but immediate distribution is not required. A terminating employee may take a distribution or rollover the balance to a Roth account in the same plan. An employer may terminate the accounts at any time. Note that contributions to the accounts are treated as Roth contributions and elective deferrals and so would need to be matched at the same rate as matching on other types of elective deferrals.

## KPMG observation

Emergency Savings Accounts are intended as a way for employees to save for, and employers to assist with the employee saving for, emergencies that may not qualify for the other distribution provisions such as car repairs, etc. What remains to be seen is employee interest in these accounts, the costs that administrators will charge for administering the additional accounts, as well as the complexity of administering these accounts including any needed corrections for inadvertent failures.

**Effective date:** Elective plan feature effective for plan years beginning after December 31, 2023.



# Increased dollar limit for mandatory distributions to terminated employees

Limit on employers' ability to transfer former employees' retirement accounts from the plan into an IRA increased from account balances from \$1,000 to \$5,000 to account balances from \$1,000 to \$7,000.

**Effective date:** Effective for distributions made after December 31, 2023.

## KPMG observation

With the fall in the market should employers look at whether there are new balances that may be mandatorily distributed? Is that how this limit works?

# Modifications to the employee plans compliance resolution system (EPCRS)

The Act makes several changes to EPCRS, the system for correcting failures of qualified retirement plans to meet the qualification rules, most recently encapsulated in Rev. Proc. 2021-30. As an initial measure, the IRS is required to make self-correction (without submission to or approval by the IRS) the default correction method under EPCRS for all inadvertent failures, absent IRS guidance providing otherwise. Specific changes are made to expand and ease the self-correction process related to plan loans. In addition, the currently temporary correction methods applicable to failures to comply with certain requirements related to automatic enrollment and automatic escalation features are made permanent.

Plan overpayments of benefits are also addressed, confirming that plan fiduciaries are not required in all instances to recoup overpayments and adding that in certain instances may not recoup overpayments. This follows the expansion of methods to correct overpayments (including when recoupment may be avoided) set forth in Rev. Proc. 2021-30.

## KPMG observation

Although often described as an expansion of the availability of self-correction as part of EPCRS, the provision doesn't prescribe any particular changes—rather, the scope of any expansion remains to be seen since the IRS retains the ability to require corrections of certain inadvertent failures to involve an IRS submission and approval process. Thus, there will be much interest in the next iteration of the published guidance setting forth the EPCRS.

**Effective date:** Revised EPCRS guidance is to be issued by December 29, 2024, while the overpayment provisions are effective as of December 29, 2022.

# Department of Labor (DOL) retirement plan “lost and found” database

In an effort to address the missing participant issue in which plans do not have current information regarding participants and are unable to determine where to send distributions, the Act calls for the DOL, with input from the Treasury Department and the PBGC, to establish a database under which individuals would be able to search for funds remaining in qualified retirement plans. For participants with such funds, the database would provide updated plan contact information for the participant to use to claim such funds.

## KPMG observation

Although the provision calls for the database to be operational by December 29, 2024, that is an aggressive goal. Much will depend on the extent to which DOL is able to use current filing processes and communications with qualified retirement plans as a means of gathering and updating the required information, versus building an entirely new reporting system. DOL will also be required to build a public-facing interface that also protects private information. Regardless, plans will want to stay current with the development of the system which will necessarily involve an increase both in the types of data plans provide to the DOL and the frequency with which it is provided or updated.

**Effective date:** Database to be operational no later than December 29, 2024.

## Other SECURE Act 2.0 provisions

### Section 102 - Modification of credit for small employer pension plan startup costs

Increases and modifies the credit for small employers (100 employees or less) for starting a qualified retirement plan. Effective for tax years beginning after December 31, 2022.

### Section 103 - Saver’s match

Provides for a federal matching contribution to a taxpayer’s IRS or retirement plan as a 50% matching contribution up to \$2,000 per individual, subject to income limitations. Replaces current law that provides for a nonrefundable credit for similar contributions. Effective for tax years beginning after December 31, 2026.

### Section 104 – Promotion of saver’s match by Treasury Department

Directs the Treasury Department to publicly promote the benefits and availability of the saver’s match.

### Section 105 – Pooled employer plan named fiduciary

Clarifies previous pooled employer plan (PEP) provisions to indicate that a PEP may appoint a named fiduciary other than an employer to collect contributions to the plan. Effective for plan years beginning after December 29, 2022.

### Section 106 – Multiple employer plans and 403(b) arrangements

Extends the expansion of employers’ ability to participate in multiple employer plans (MEPs) contained in the original SECURE Act to 403(b) arrangements. Effective for plan years beginning after December 31, 2022.

### Section 108 - Indexing IRA catch-up limit

Indexes the \$1,000 increase in permissible contributions to an IRA for individuals who have attained age 50. Effective for tax years beginning after December 31, 2023.

### **Section 111 - Small employer pension plan startup credit and MEPs**

Clarified that small employers who start a plan by enrolling in a MEP may be eligible for all three years of the startup credit even if enrolling in a previously existing MEP. Effective retroactively for plan years beginning after December 31, 2019.

### **Section 112 - Military spouse retirement plan eligibility credit for small employers**

Provides small employers a tax credit with respect to their defined contribution plans if they (1) make military spouses eligible to participate within two months of hire, (2) upon eligibility, make the military spouse eligible for any matching or nonelective contribution for which they otherwise would have been eligible at two years of service, and (3) vest the military spouse immediately in all employer contributions. The credit equals the sum of (1) \$200 per military spouse, and (2) 100% of all employer contributions (up to \$300) made on behalf of the military spouse, for a maximum credit of \$500. This credit applies for three years with respect to each military spouse that is not an HCE. Effective for tax years beginning after December 29, 2022.

### **Section 114 - Deferral of tax for certain sales of employer stock to S Corp ESOPs**

Expands deferral of recognition of gain on the sale of stock to an ESOP under section 1042 to sales of employer stock to S corporation ESOPs (subject to certain limits). Effective for sales made after December 31, 2027.

### **Section 116 - Additional nonelective contributions to SIMPLE plans**

Permits an employer to make additional contributions beyond the current required contributions to each employee in a SIMPLE plan in a uniform manner, provided that the contribution may not exceed the lesser of up to 10% of compensation or \$5,000 (indexed). Effective for tax years beginning after December 31, 2023.

### **Section 117 - Increased contribution limits for SIMPLE plans**

Increases the annual deferral limit and the catch-up contribution at age 50 by 10% as compared to the limit that would otherwise apply in the first

year this change is effective, in the case of an employer with no more than 25 employees. Permits an employer with 26 to 100 to provide higher deferral limits, but only if the employer either provides a 4% matching contribution or a 3% employer contribution. Makes similar changes to the contribution limits for SIMPLE 401(k) plans. Effective for tax years beginning after December 31, 2023.

### **Section 118 - Nontrade or business SEP contributions**

Permits employers of domestic employees (e.g., nannies) to provide retirement benefits for such employees under a Simplified Employee Pension ("SEP"). Effective for tax years beginning after December 29, 2022.

### **Section 119 - Section 415 limit for certain employees of rural electric cooperatives**

Section 415 generally limits the amount that may be paid by a plan in annual benefits to the lesser of \$245,000 (2022) or 100% of the participant's average compensation. Section 119 eliminates the compensation-based limit for participants who are NHCEs and participate in a rural electric cooperative retirement plan. Effective for limitation years ending after the date of enactment of this Act.

### **Section 120 - Exemption for certain automatic portability transactions**

An employer may distribute a participant's account balance without participant consent if the balance is under \$5,000 (\$7,000 as amended by SECURE Act 2.0) and the balance is immediately distributable (e.g., after a termination of employment). An employer must roll over this distribution into a default IRA if the account balance is at least \$1,000 and the participant does not affirmatively elect otherwise. Section 120 permits a retirement plan service provider to provide employer plans with automatic portability services involving the automatic transfer of a participant's default IRA (established in connection with a distribution from a former employer's plan) into the participant's new employer's retirement plan, unless the participant affirmatively elects otherwise. Effective for transactions occurring on or after December 29, 2023.

### **Section 121 - Starter 401(k) plans for employers with no retirement plan**

Permits an employer that does not sponsor a retirement plan to offer a starter 401(k) plan (or safe harbor 403(b) plan). A starter 401(k) plan (or safe harbor 403(b) plan) generally would require that all employees be default enrolled in the plan at a 3% to 15% of compensation deferral rate. The limit on annual deferrals would be the same as the IRA contribution limit, which for 2022 is \$6,000 with an additional \$1,000 in catch-up contributions beginning at age 50. Effective for plan years beginning after December 31, 2023.

### **Section 122 - Assistance to States in locating owners of applicable savings bonds**

Requires the Treasury Department to share certain relevant information with a state that relates to an applicable savings bond registered to an owner with a last known or registered address in that state, to allow the state to use that information to locate the registered owner in accordance with the state's standards for recovery of abandoned property. Effective on December 29, 2022.

### **Section 123 - Certain securities treated as publicly traded in case of employee stock ownership plans**

Updates certain ESOP rules related to whether a security is a "publicly traded employer security" and "readily tradeable on an established securities market" to cover less regularly traded stock, to make it easier for these corporations to sponsor ESOPs. Effective for plan years beginning after December 31, 2027.

### **Section 124 - Modification of age requirement for qualified ABLÉ programs**

Increases the age by which blindness or disability must occur for an individual to be an eligible individual by reason of such blindness or disability for an ABLÉ program. Effective for tax years beginning after December 31, 2025.

### **Section 126 - Rollovers from 529 accounts to Roth IRAs**

Beneficiaries of 529 college savings accounts permitted to rollover without penalty up to \$35,000 over the course of their lifetime from any 529 account in their name to their Roth IRA. These rollovers are also subject to Roth IRA

annual contribution limits, and the 529 account must have been open for more than 15 years. Effective for distributions made after December 31, 2023.

### **Section 128 - 403(b) plan access to collective investment trusts**

Permits 403(b) custodial accounts to participate in group trusts with other tax-preferred savings plans and IRAs. Plan sponsors should consult counsel regarding non-tax compliance issues that may arise, including applicable securities laws. Effective after December 29, 2022.

### **Sections 201 and 202 – Modifications to RMD rules to accommodate QLACs**

Modifies the RMD rules to accommodate life annuities with certain guaranteed return features and qualified longevity annuity contracts (QLACs). Effective for calendar years beginning in 2023, with certain provisions subject to issuance of regulations within 18 months by the Treasury Department.

### **Section 203 - Insurance-dedicated exchange-traded funds (ETFs)**

Directs the Treasury Department to update the regulations to facilitate the creation of a new type of ETF that is "insurance-dedicated." Effective for segregated asset account investments made on or after December 29, 2029.

### **Section 204 – Modifications to RMD rules for partial annuitizations**

Permits an account owner to elect to aggregate distributions from the portions of the account holding a life annuity and the remaining portion of the account for purposes of determining RMDs. Effective as of December 29, 2022.

### **Section 306 – Elimination of the "first day of the month" rule for governmental section 457(b) plans**

Eliminates the rule that participants in a governmental 457(b) plan must request changes in their deferral rate prior to the beginning of the month in which the deferral will be made. Allows deferral elections to be made at any time prior to the date that the compensation being deferred is available. Effective for tax years beginning after the date of enactment of this Act.

### **Section 307 – Modifications to qualified charitable distribution rules**

Expands the IRA charitable distribution provision to allow for a one-time, \$50,000 distribution to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts, effective for distributions made in tax years beginning after December 29, 2022. Also indexes for inflation the annual IRA charitable distribution limit of \$100,000, effective for distributions made in tax years ending after December 29, 2022.

### **Section 308 - Distributions to private firefighters**

Extends the rule for public firefighters not applying the early distribution tax to distributions after age 50 rule to private sector firefighters. Effective for distributions made after December 29, 2022.

### **Section 309 - Exclusion of certain disability-related first responder treatment payments**

Permits first responders to exclude service-connected disability pension payments from gross income after reaching retirement age. Effective tax years beginning after December 31, 2026.

### **Section 310 - Application of top-heavy rules to defined contribution plans covering excludable employees**

Separate testing of otherwise excludable employees (e.g., those who are under age 21 and have less than 1 year of service) currently is not allowed for the top-heavy test. The Act allows an employer to perform the top-heavy test separately on the non-excludable and excludable employees. Effective for plan years beginning after December 31, 2023.

### **Section 313 - IRA statute of limitations for excise tax on excess contributions and certain accumulations**

Provides that a three-year period of limitations begins when the taxpayer files a Form 1040 for the year of the violation, other than a 6-year period of limitations in the case of excess contributions. Effective December 29, 2022.

### **Section 314 – Modification of family aggregation rules**

Updates the family aggregation rules applicable when performing the coverage and nondiscrimination tests to qualified retirement plans. The first update addresses spouses with separate businesses who reside in a community property state; the second update modifies the attribution of stock between parents and minor children. Effective for plan years beginning after December 31, 2023.

### **Section 316 - Amendments to increase benefit accruals under plan for previous plan year allowed until employer tax return due date**

Current law provides that plan amendments to an existing plan generally must be adopted by the last day of the plan year in which the amendment is effective. The Act amends these provisions to allow discretionary amendments that increase participants' benefits to be adopted by the due date of the employer's tax return. Effective for plan years beginning after December 31, 2023.

### **Section 317 - Retroactive first year elective deferrals for sole proprietors**

An employer may establish a new 401(k) plan after the end of the tax year, but before the employer's tax filing date and treat the plan as having been established on the last day of the tax year. Such plans may be funded by employer contributions up to the employer's tax filing date. The Act allows these plans, when they are sponsored by sole proprietors or single-member LLCs, to receive employee contributions up to the date of the employee's tax return filing date for the initial year. Effective for plan years beginning after December 29, 2022.

### **Section 318 - Performance benchmarks for asset allocation funds**

Directs the DOL to update the participant disclosure regulations so that an investment that uses a mix of asset classes (e.g., target date funds) can be benchmarked against a blend of broad-based securities market indices. The DOL is to update its regulations by no later than December 29, 2024.

### **Section 319 - Review and report to Congress relating to reporting and disclosure requirements**

Directs the Treasury Department, DOL, and PBGC to review reporting and disclosure requirements for pension plans as soon as practicable, and to make recommendations to Congress to consolidate, simplify, standardize, and improve such requirements no later than December 29, 2025.

### **Section 320 - Eliminating unnecessary plan requirements related to unenrolled participants**

Eliminates employer requirements to provide certain intermittent ERISA or Code notices to eligible employees who have not elected to participate in the plan (unenrolled participants). Instead, the plan is required to send (1) an annual reminder notice of the participant's eligibility to participate in the plan and any applicable election deadlines, and (2) any otherwise required document requested at any time by the participant. This rule applies only with respect to an unenrolled participant who received the summary plan description (SPD), in connection with initial eligibility under the plan, and any other notices related to eligibility under the plan required to be furnished. Effective for plan years beginning after December 31, 2022.

### **Section 321 - Review of DOL pension risk transfer interpretive bulletin**

Requires DOL to review the current interpretive bulletin governing pension risk transfers to determine whether amendments are warranted and to report to Congress its finding no later December 20, 2023.

### **Section 322 - IRAs involved in a prohibited transaction**

Clarifies that if an individual has multiple IRAs, only the IRA with respect to which the prohibited transaction occurred will be disqualified. Effective for tax years beginning after December 29, 2022.

### **Section 323 - Clarification of substantially equal periodic payment rule**

An exception to the 10% additional tax on early distributions applies to substantially equal periodic payments that are made over the account owner's life expectancy. Section 323 provides that the exception continues to a rollover

of the account, an exchange of an annuity providing the payments, or an annuity that satisfies the RMD rules. Effective for transfers, rollovers, and exchanges after December 31, 2023, and effective for annuity distributions on or after December 29, 2022.

### **Section 324 - Treasury guidance on rollovers**

Requires the Treasury Department to simplify and standardize the rollover process by issuing sample forms for direct rollovers that may be used by both the incoming and outgoing retirement plan or IRA, by no later than January 1, 2025.

### **Section 328 - No direct payment requirement on exclusion from gross income of distributions from governmental plans for health and long-term care insurance**

Provides that the exclusion from gross income (\$3,000) for a distribution from a governmental retirement plan to a public safety officer to pay for their health insurance premiums no longer requires that the plan directly pay the insurance premiums. Effective for distributions made after December 29, 2022.

### **Section 329 - Modification of public safety officer exception to early distribution tax**

Extends the exception from the 10% additional tax on early distributions from a governmental plan to a public safety officer who is at least age 50 to also cover public safety officers with at least 25 years of service with the employer sponsoring the plan. Effective for distributions made after December 29, 2022.

### **Section 330 – Extension of exception to early distribution tax to corrections officers of State and local government employers**

Extends the public safety officer exception to the 10% early distribution tax to corrections officers who are employees of state and local governments, effective for distributions after December 29, 2022.

### **Section 332 – Replacement of a SIMPLE IRA plan with a safe harbor 401(k) plan**

Allows an employer to replace a SIMPLE IRA plan with a SIMPLE 401(k) plan or other 401(k) plan that requires mandatory employer contributions during a plan year, effective for plan years beginning after December 31, 2023.

### **Section 333 - Elimination of additional tax on corrective distributions of excess contributions**

Exempts the corrective distribution of excess contributions and earnings allocable to the excess contributions from the 10% additional tax on early distributions, effective retroactively.

### **Section 335 - Corrections of mortality tables**

Requires that for purposes of the minimum funding rules, a pension plan is not required to assume beyond the plan's valuation date future mortality improvements at any age greater than 0.78%. The Treasury Department is to amend the relevant regulation within 18 months, though the change is effective as of December 29, 2022.

### **Section 336 – GAO Report to Congress on section 402(f) notices**

Requires the GAO to issue a report to Congress by June 29, 2024, on the effectiveness of section 402(f) notices describing rollover options for distributions.

### **Section 337 - Modification of RMD rules for special needs trust**

Clarifies that, in the case of a special needs trust established for a beneficiary with a disability, the trust may provide for a charitable organization as the remainder beneficiary. Effective for calendar year 2023 and subsequent years.

### **Section 338 - Requirement to provider paper statements to plan participants in certain cases**

Amends ERISA to generally provide that, with respect to defined contribution plans, unless a participant elects otherwise, the plan must provide a paper benefit statement at least once annually. The other three quarterly statements required under ERISA are not subject to this rule (i.e., they can be provided electronically). For defined benefit plans, unless a participant elects

otherwise, the statement that must be provided once every three years under ERISA must be a paper statement. Effective for plan years beginning after December 31, 2025.

### **Section 339 - Recognition of tribal government domestic relations orders**

Adds Tribal courts to the list of courts authorized under federal law to issue qualified domestic relations orders (QDROs). Effective for QDROs received by plan administrators after December 31, 2022, including those submitted for reconsideration after such date.

### **Section 340 - Defined contribution plan fee disclosure improvements**

Requires DOL to review its regulations on fiduciary disclosure requirements in participant-directed individual account plans and submit a report to Congress within three years.

### **Section 341 - Consolidation of defined contribution plan notices**

Directs the Treasury Department and DOL within two years to amend regulations to permit a plan to consolidate certain required plan notices currently required to be provided as individual notices.

### **Section 342 - Information needed for financial options risk mitigation act**

Requires pension plan administrators to provide plan participants and retirees with information to assist with the decision between a lump sum payout versus other benefits under the plan. DOL to issue regulations not earlier than December 29, 2023, to be applicable not earlier than the issuance of a final rule.

### **Section 343 - Defined benefit annual funding notices**

Modifications to identify defined benefit pension plan funding issues more clearly on a plan's annual funding notice. Effective for plan years beginning after December 31, 2023.

### **Section 344 – DOL Report on pooled employer plans (PEPs)**

Requires DOL to conduct a study on the new and growing pooled employer plan industry within five years, with subsequent reports completed every five years thereafter.

### **Section 345 - Annual audits for group of plans**

Clarifies that plans filing under a Group of Plans need only submit an audit opinion if the separate plan has 100 participants or more (and not aggregate across all plans in the Group of Plans for purposes of applying the requirement). Effective on the date of enactment of this Act.

### **Section 346 - Worker Ownership, Readiness, and Knowledge (WORK) Act**

Funds DOL to make grants to promote employee ownership through existing and new programs for fiscal years 2025 to 2029.

### **Section 347 - Report by the DOL on the impact of inflation on retirement savings**

Directs the DOL, in consultation with the Treasury Department, to study the impact of inflation on retirement savings and submit a report to Congress by March 29, 2023.

### **Section 348 - Cash balance clarifications**

Clarifies that, for purposes of the applicable Code and ERISA rules, the interest crediting rate that is treated as in effect and as the projected interest crediting rate is a reasonable projection of such variable interest rate, subject to a maximum of 6%. Effective for plan years beginning after December 29, 2022.

### **Section 349 - Termination of variable rate premium indexing**

Removes the “applicable dollar amount” language in the rules for determining the premium fund target for purposes of unfunded vested benefits and replaces it with a flat \$52 for each \$1,000 of unfunded vested benefits. Effective on December 29, 2022.





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