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Milestone Retirement Reform Arrives: Key Provisions of SECURE 2.0

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On December 29, 2022, President Biden signed into law the Consolidated Appropriations Act, 2023, which contains an impressive collection of retirement plan reform provisions, popularly known as “SECURE 2.0.”¹ While certain elements of SECURE 2.0 build on provisions of other recent retirement reform, many provisions are novel, expansive, complex and, often, optional. Accordingly, employers, plan sponsors and administrators should consult with their ERISA counsel and familiarize themselves with SECURE 2.0, to decide which provisions it may adopt and, where applicable, to ensure a smooth and informed transition towards expanded retirement plan eligibility, flexibility and participation enhancement.

AGAINST THE BACKDROP OF SECURE 1.0

At the end of 2019, the “Setting Every Community Up for Retirement Enhancement Act of 2019” (SECURE 1.0) was signed into law as part of

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the Further Consolidated Appropriations Act, 2020.² SECURE 1.0 arguably became the first major retirement-related legislation enacted since the 2006 Pension Protection Act. Major elements of the bill included the following: expanding 401(k) eligibility for long-term, part-time workers; raising the minimum age for required minimum distributions from 70.5 years of age to 72; allowing individuals to use 529 plan money to repay student loans; eliminating the “stretch IRA” by requiring non-spouse beneficiaries of inherited IRAs to withdraw and pay taxes on all distributions from inherited accounts within 10 years; and making it easier for 401(k) plans to offer annuities.³ However, consensus has since been building, at least among certain industry groups, that SECURE 1.0 did not go far enough. After lengthy bipartisan negotiations, proposals, and various iterations, SECURE 2.0 has finally passed and introduces even more changes, new requirements and opportunities for plans (including changes to provisions altered by SECURE 1.0).

The below key takeaways offer a summary of the provisions most anticipated to substantively impact employers, plan sponsors and administrators, and necessarily do not cover every provision nor every nuance or exception in those provisions covered. As a result, an employee benefits attorney should be consulted in connection with planning for or implementing any SECURE 2.0 features. Additionally, because the below covers SECURE 2.0 as very recently passed into law, all modifications to employee benefits plans and programs should be checked against subsequent guidance from the Internal Revenue Service (IRS).

KEY PROVISIONS OF SECURE 2.0

1. Requires Auto-Enrollment and Auto-Increases for New Defined Contribution Plans

Under current law, automatic enrollment and automatic contribution increases may be used by 401(k) and 403(b) plans, but are not required features.⁴ However, pursuant to Section 101 of SECURE 2.0, defined contribution plans (including both 401(k) and 403(b) plans) established after the date of enactment are required, after December 31, 2024, to automatically enroll employees (upon their becoming eligible) at a pretax contribution level of at least 3% (and up to 10%) of their annual compensation, with the ability for such employees to opt out or to elect otherwise.⁵ This base level participation rate then automatically increases by 1% each year, up to at least 10% (but not more than 15%) of annual compensation (unless the participant elects otherwise).⁶ These auto-features, in particular, are widely expected to better position employees for stronger retirement savings, particularly as employees auto-enrolled in a retirement plan tend to remain enrolled.

It is, however, also anticipated that there may be some practical challenges and administrative errors committed by plan sponsors when

implementing these new auto-features. Accordingly, to help ease anticipated transition issues, SECURE 2.0 also codifies a corrective window of 9.5 months following the end of a given plan year (as further discussed under paragraph 6 below), which provides an important grace period for plans to rectify (without penalty) inadvertent administrative errors.⁷ Additionally, existing 401(k) and 403(b) plans established before the date of enactment are exempt from the new auto-enrollment requirements; however, such grandfathering does not apply to employers adopting an existing multiple employer plan after the date of enactment.⁸ There are also certain other exceptions, including for church and government retirement plans, small businesses with 10 or fewer employees, SIMPLE 401(k) plans, and businesses in existence for less than three years.⁹ This provision will be of particular interest to those employers that may be incentivized to adopt a plan after the date of enactment, including under a state law mandate (as a number of states are requiring the adoption of 401(k) plans by employers, individually or through a state run system).

2. Increases the Required Minimum Distribution Age and Permits Special Surviving Spouse Treatment

Before SECURE 1.0, the required minimum distribution (RMD) age was 70.5 for decades; SECURE 1.0 then raised that threshold generally to 72 beginning in 2020, allowing participants more time before mandating certain minimum distributions.¹⁰ Pursuant to its Section 107, SECURE 2.0 now further increases the RMD to age 73 beginning January 1, 2023 (for individuals who attain age 72 after December 31, 2022, and age 73 before January 1, 2033) and then to age 75 beginning January 1, 2033 (for individuals who attain age 74 after December 31, 2032).¹¹ Such changes are effective for distributions required after December 31, 2022.¹² In practice, these changes to RMDs allow retirees to wait longer to withdraw savings so to better manage personal tax planning (among other considerations). Additionally, under Section 327 of SECURE 2.0, effective after December 31, 2023, if an employee who dies before RMDs have begun has designated a spouse as sole beneficiary, the surviving spouse may elect to be treated as the employee under the RMD rules.¹³

3. Permits Higher Catch-Up Contributions for Individuals Aged 60 to 63 and Indexes IRA Catch-Up Limit

For 2023, the limit on catch-up contributions (for those aged 50+) was generally increased to \$7,500 (or \$3,500 for SIMPLE plans), indexed annually for inflation.¹⁴ Pursuant to its Section 109, SECURE 2.0 keeps the catch-up trigger age at 50 but, for employees aged 60 to 63, generally increases the limit to the greater of (x) \$10,000 per year (or \$5,000 for SIMPLE plans) or (y) 50% more than the otherwise regular catch-up

amount, effective after December 31, 2024, with the increased amounts then indexed for inflation after 2025.¹⁵ Additionally, effective January 1, 2024, all catch-up contributions to applicable employer plans (with limited exceptions, including for SIMPLE plans and for employees who earn \$145,000 or less in the previous year, indexed for inflation) must be made on an after-tax, Roth basis.¹⁶ Separately, the current limit on annual IRA catch-up contributions (also for those aged 50+) is a flat \$1,000 and is not indexed for inflation.¹⁷ Section 108 of SECURE 2.0 indexes IRA catch-up limits in the same manner in which regular IRA contributions are indexed, effective after December 31, 2023.¹⁸ Such catch-up changes may provide much desired opportunities for employees to make up retirement savings and maximize income planning. This will be of interest to all employers and will require proactive communication to plan participants in 2023, to explain how their catch-up contributions will be treated beginning in 2024. Additionally, changes to payroll processes may be required.

4. Permits Treatment of Student Loan Payments as Elective Deferrals for Purposes of Employer Matching Contributions

Under current law, an employer matching contribution technically cannot be made based on student loan repayments (although the IRS has stated in a private letter ruling that a plan may provide for a nonelective employer contribution based on student loan repayments without violating the contingent benefit rule).¹⁹ Section 110 of SECURE 2.0 will permit, but not require, certain employers to contribute to an employee's 401(k), 403(b), SIMPLE IRA or 457(b) plan account by matching a portion of their "qualified student loan payments," effectively treating the applicable student loan payment as an elective deferral for purposes of providing a matching contribution.²⁰ "Qualified student loan payment" is intentionally defined broadly, according to the Senate Finance Committee's own summary, so to pick up any "indebtedness incurred by the employee solely to pay qualified higher education expenses of the employee";²¹ as a result, such qualifying loan payments may include, for instance, graduate school payments. This provision, effective after December 31, 2023,²² may be particularly helpful for employers who are eager to attract fresh waves of recent graduates who feel overwhelmed by student loan debt (and consider it prohibitive to saving for retirement). Importantly, SECURE 2.0 also contains changes to non-discrimination testing that will ease implementation concerns for this benefit.²³ We expect this provision will be of interest to many employers; however, employers will need to consider a host of factors, including the degree to which they may prefer to support student loan debt payments (if at all) outside of the plan rather than as part of the plan.

5. Allows Employer Matching Contributions to Receive Roth Treatment

Currently, employer matching contributions are not permitted to be made on an after-tax, Roth basis (and must be on a pre-tax basis only).²⁴ However, pursuant to Section 604 of SECURE 2.0, defined contribution plan sponsors may, but are not required to, permit employees to elect that a portion or all of their employer matching contributions are to be treated as after-tax, Roth contributions.²⁵ This will require that such matching contributions be 100% vested. This provision becomes effective for contributions made immediately after SECURE 2.0's enactment, although we expect not many employers will adopt this provision right out of the gate as payroll and other administrative modifications would be needed.²⁶

6. Codifies and Expands Certain Aspects of the Employee Plans Compliance Resolution System (EPCRS)

Although the IRS' EPCRS contains rules that permit plans to voluntarily self-correct errors, including with respect to missed deferrals under auto-enrollment or auto-increase features, such corrective avenues have not yet been codified in statutory law.²⁷ However, Section 350 of SECURE 2.0 now codifies aspects of the EPCRS's safe harbor for corrections of employee elective deferral failures.²⁸ In particular, plans administering auto-enrollment and auto-escalation features officially receive 9.5 months (following the end of the plan year in which the error occurred) as a "safe harbor" to resolve any innocent administrative missteps (referred to as "reasonable administrative errors").²⁹ This corrective window is effective for errors occurring after December 31, 2023.³⁰ Given SECURE 2.0's new requirements regarding certain mandatory auto-enrollment and auto-increase elements, this codified grace period for plan corrections serves as crucial reassurance to many employers as they implement the new requirements.

Additionally, Section 305 of SECURE 2.0 expands the scope of the EPCRS to (i) permit custodians of IRAs to remedy eligible inadvertent failures, and (ii) add new safe harbors for resolving eligible inadvertent failures (e.g., earnings calculations).³¹ Such provisions provide welcome relief for employers and plan sponsors who inadvertently err in plan administration, offering greater flexibility and a broader net of covered self-corrections. Now, under SECURE 2.0, employers may self-correct most administrative errors, as long as the failure is self-corrected within a reasonable period after such failure is identified and corrective actions begin before the IRS identifies the error.

7. Reduces the Service Requirement for Long-Term, Part-Time Workers

SECURE 1.0 expanded the eligibility for “long-term, part-time workers” to contribute to their employers’ 401(k) plan, implementing a requirement that those who worked 500 or more hours per year with the employer for at least 3 consecutive years (and have satisfied minimum age requirements by the end of such 3-year period) must be permitted to participate, beginning with plan year 2021.³² Pursuant to its Section 125, SECURE 2.0 now expedites plan participation for such workers by shortening their eligibility waiting period from 3 to 2 years, effective for plan years beginning after December 31, 2024.³³

As women are more likely to work part-time than men,³⁴ this provision may prove particularly important for women in the workforce (and for employers seeking to hire or retain more female employees). Additionally, this 1-year reduction to service period requirements may materially increase the eligible part-time employee pool for employers that utilize a large part-time workforce, and such businesses should be mindful about this accelerated eligibility, particularly as plan modifications may still be currently underway to implement the recent SECURE 1.0 requirements.

8. Creates a National, Online “Lost and Found” Database for Retirement Plans

Pursuant to its Section 303, SECURE 2.0 establishes a new, online “lost and found” repository for retirement plans by requiring, within 2 years of the date of its enactment, that the Department of Labor (DOL) and Treasury Department (Treasury) coordinate the creation of a central, searchable database for lost participant benefits.³⁵ Specifically, the retirement savings “lost and found” will collect information on plan administrators and plans in which an individual was a participant or beneficiary (including missing, lost or non-responsive participants and beneficiaries) and will enable the individual to locate any benefits owed (and also enable companies to update plan contact information).³⁶ Individuals may opt-out of inclusion in the database.³⁷ This resource may prove invaluable for reuniting “lost” retirement accounts with their owners, including if an employer is experiencing difficulty locating a former employee, or vice versa (e.g., in instances of an employer’s name change, merger into a different company, and the like).

9. Updates Controlled Group Family Attribution Rules

Family attribution rules address scenarios in which a family member, such as a spouse or child, is treated as having an ownership interest in

a business, thereby contributing to the determination of the employer and/or the controlled group/affiliated service group (for various testing and distribution rights).³⁸ Currently, family attribution rules rely largely on principles of familial property ownership in a community property state.³⁹ Section 315 of SECURE 2.0 introduces special rules to address family attribution and disregard certain community property laws for ownership determinations (and, helpfully, to the extent this provision results in controlled group/affiliated service group issues, the provision identifies that such change will qualify for transition relief under Internal Revenue Code Section 410(b)(6)(C)).⁴⁰ It is anticipated that this reform to the current tax law will soften a penalty felt predominantly by small businesses in community property states, and which disproportionately affects female business owners.⁴¹ In fact, when the House Ways & Means Committee initially approved SECURE 2.0 in 2021, the American Retirement Association recognized this measure as one of the more pivotal provisions within the law for this very reason, writing in a letter of support that it “corrects and modernizes the outdated and unfair family attribution rules to ensure women business owners are not penalized if they happen to have minor children or live in a community property state.”⁴²

10. Creates Penalty-Free Early Withdrawals for Individuals in Instances of Domestic Abuse

Section 314 of SECURE 2.0 introduces certain new penalty-free early withdrawals in instances of domestic abuse (pursuant to the applicable participant-victim’s self-certification), in an amount up to the lesser of (i) \$10,000 (indexed for inflation) or (ii) 50% of the present value of the employee’s vested benefits under the plan.⁴³ In addition, these eligible distributions to a domestic abuse victim may be recontributed to the applicable retirement plan (subject to certain requirements) over 3 years.⁴⁴ This provision becomes effective for distributions made after December 31, 2023,⁴⁵ and is expected to provide much needed financial aid to victims in distress.

11. Permits Employers to Rely on Employee Self-Certifications With Respect to Hardship Distribution Conditions and Revises 403(b) Hardship Rules to Match 401(k) Rules

Hardship distributions from certain qualified plans may be made if prompted by an immediate and heavy financial need and if such withdrawal is necessary to meet that need, and current law requires a relatively streamlined hardship documentation approach (within which certain self-certifications may be available if certain requirements are

met).⁴⁶ Section 312 of SECURE 2.0 now further relaxes this approach for employers by expressly permitting (i) employees to self-certify that they have experienced one of the qualifying hardship events for purposes of taking a hardship withdrawal (and that the withdrawal is not in excess of the amount required), and (ii) administrators to rely on the employee's self-certification.⁴⁷ This change helps shift the burden off employers, providing more latitude and administrative relief for organizations.

Additionally, Section 602 of SECURE 2.0 conforms certain 403(b) plans' hardship distribution rules to those applicable to 401(k) plans.⁴⁸ For context, the Tax Cuts and Jobs Act of 2017 and Bipartisan Budget Act of 2018 removed the requirement that participants must exhaust plan loans prior to taking a hardship distribution, and broadened the contribution sources from which 401(k) hardship distributions may be made, such as qualified matching contributions (QMACs), qualified nonelective contributions (QNECs) and earnings on elective contributions.⁴⁹ At the time, this expansion did not generally apply to 403(b) hardship distributions (and, where applicable, it was not without certain limitations or requirements);⁵⁰ however, SECURE 2.0 now similarly includes such contribution sources for 403(b) plans and also removes the plan loan prerequisite, effective after December 31, 2023.⁵¹

12. Incentivizes Smaller Businesses to Establish New Qualified Retirement Plans and to Provide Matching Employer Contributions

Under current law, small employers with fewer than 100 employees may be eligible for a 3-year pension plan start-up tax credit equal to up to 50% of administrative costs, up to a maximum annual limit of \$5,000.⁵² However, pursuant to Section 102 of SECURE 2.0, this start-up tax credit for businesses with 50 or fewer employees is increased to 100% of qualified start-up costs (still up to \$5,000) for the new plan's first 3 years.⁵³ This change makes it less burdensome for small businesses to adopt and maintain retirement plans by essentially funding a low-cost startup for such qualifying employers for the first 3 years of operation.

Additionally, under Section 111 of SECURE 2.0, small employers that join a pooled employer plan or multiple employer plan (PEP or MEP, respectively) can benefit from the startup tax credit for their first respective 3 years of plan participation, no matter how old the underlying, shared plan is (with the first eligible credit year triggered by the date such plan becomes effective for that applicable employer).⁵⁴ By way of background, PEPs were created by SECURE 1.0 and allow 2 or more unrelated employers to join the same retirement plan, which is then treated as a single plan for ERISA purposes; PEPs are therefore considered to be "open MEPs" and are not subject to the DOL's commonality requirements (versus "closed MEPs," which were permitted prior to SECURE 1.0 assuming the multiple, unrelated employers shared a common nexus).⁵⁵

Effective after December 31, 2022, Section 106 of SECURE 2.0 further allows PEPs and MEPs to now include 403(b) plans, which was unavailable under SECURE 1.0.⁵⁶ As a result, SECURE 2.0 broadens the scope of existing PEP and MEP provisions to allow certain unrelated non-profit employers to join a single 403(b) plan, so that such plans can be established and maintained under rules similar to qualified plans (and thereby becoming more attractive offerings for employers who may not otherwise offer a retirement plan at all).

Furthermore, Section 102 of SECURE 2.0 provides a new, separate tax credit to motivate small businesses to make direct employer contributions to their eligible plan (which, for this new credit, does not include defined benefit plans), offsetting 100% of matching employer contributions per participant (up to a maximum annual limit of \$1,000 per employee), with such 100% gradually phased out over the first 5 years.⁵⁷ This tax credit applies to tax years beginning after December 31, 2022, and to businesses with 50 or fewer employees (and is then phased out for business with between 51 and 100 employees).⁵⁸ Such provisions incentivize small businesses to offer retirement plans features that may otherwise seem overly burdensome, and motivate small employers to provide financial rewards to employees to promote participation (particularly as employer matches can be a significant pull for employees).

Along this vein, various SECURE 2.0 provisions offer additional financial incentives to increase small employer plan offerings and encourage participation. Such provisions include a new military spouse retirement plan eligibility tax credit for certain small businesses upon the business implementing certain eligibility and vesting requirements (equal to the sum of, per year, \$200 per military spouse-participant plus up to \$300 per eligible spouse for employer contributions, which apply for up to 3 years per spouse);⁵⁹ and permitting *de minimis* financial incentives (such as low-dollar gift cards) to encourage plan participation (but which may not be paid for with plan assets).⁶⁰

13. Provides for Greater Access to Emergency Funds

A priority of the final SECURE 2.0 includes greater access to retirement funds for emergencies and life crises, including as noted above with respect to domestic abuse victims and hardship withdrawals (paragraphs 10 and 11, respectively). Consistent with this focus, Section 127 of SECURE 2.0 debuts a new retirement plan-linked “emergency savings” account, whereby eligible non-highly compensated employees may be automatically enrolled by their employer into an emergency savings account maintained as part of the retirement plan.⁶¹ Effective after December 31, 2023, these accounts have an annual contribution cap equal to the lesser of (x) \$2,500 (indexed for inflation) or (y) an amount selected by the plan sponsor, and contributions are on an after-tax, Roth basis.⁶² Among other requirements, emergency savings accounts must

be held in cash or certain other investment forms consistent with the need for liquidity.⁶³ Also consistent with this push towards broadening emergency fund access, Section 115 of SECURE 2.0 exempts “emergency expense” withdrawals made after December 31, 2023, from the otherwise applicable penalties on early withdrawals, with such distributions limited to one per year (up to \$1,000) for “unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses” (and with the opportunity for participant repayment within a 3-year period).⁶⁴ Certain other SECURE 2.0 provisions also provide further withdrawal leniency, for instance, in cases of terminal illness or qualified federally declared disasters.⁶⁵

14. Eases Plan Administration

SECURE 2.0 contains a number of additional provisions designed to ease the administration of retirement plans. A few examples include: changing benefit overpayment recovery requirements (for instance, by limiting the extent to which plans must recoup excess plan payments from participants and instituting certain protections for the affected participant, as well as minimizing consequences if the plan fails to recover inadvertent benefit overpayments);⁶⁶ reducing the individual tax penalty for failure to take RMDs for the applicable tax year from 50% to 25% of the shortfall (i.e., the amount by which the RMD exceeds the actual distribution made), with further reductions for IRAs to 10% if resolved within a 2-year correction window;⁶⁷ amending and/or relaxing certain life annuity requirements in qualified plans and IRAs;⁶⁸ clarifying the disqualification rule that applies when an owner or beneficiary of multiple IRAs engages in a prohibited transaction under one such IRA (by limiting treatment to the applicable IRA involved in the prohibited transaction rather than disqualifying all such IRAs);⁶⁹ and reducing notice requirements for unenrolled plan participants (by eliminating certain superfluous required disclosures for non-participants).⁷⁰ SECURE 2.0 also requires that the DOL, Treasury, and Pension Benefit Guaranty Corporation (PBGC), among others, revisit and/or provide additional guidance regarding, as applicable, certain other existing retirement plan requirements and regulations such that possible avenues for simplification, consolidation, and standardization can be addressed.⁷¹ SECURE 2.0 also simplifies and makes less costly the administration of defined benefit pension plans such as by freezing the variable rate PBGC premium at its current 2023 rate of \$52 per \$1,000 of unfunded vested benefits.⁷²

CONCLUSION

Although SECURE 2.0 plan amendments are permitted to be made on or before the last day of the first plan year beginning on or after

January 1, 2025 (or 2027, in the cases of governmental or collectively bargained plans), affected plans must operate in compliance as of the effective date of the applicable SECURE 2.0 requirement.⁷³ Accordingly, employers, plan sponsors and administrators should reach out to their ERISA counsel as soon as possible to learn more about the new law and to understand their obligations and options thereunder, including how to incorporate its changes, design programs that maximize opportunities for both employers and employees, and establish procedures that comply with any new requirements. Businesses should begin strategizing and become familiar with SECURE 2.0 so that they can implement any necessary plan changes. Employers and counsel alike should also carefully review subsequent guidance from the IRS, which would help clarify various SECURE 2.0 provisions, including with respect to implementation, interpretation, and enforcement.

Notes

1. H.R. 2617, 117th Cong. (2022); see also Senate Finance Comm., 117th Cong., Overview of the SECURE 2.0 Act of 2022 (Dec. 20, 2022), available at https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf.
2. Setting Every Community Up for Retirement Enhancement Act of 2019, Pub. L. 116-94, 133 Stat. 3137 (2019).
3. Elizabeth O' Brien, Congress Just Passed the Biggest Retirement Bill in More Than a Decade. Here's What You Need to Know, Money.com (Dec. 29, 2019), available at <https://money.com/what-serure-act-retirement-law-means-for-you/>; see also Leon LaBrecque, The SECURE Act And Your 401(k) & IRA: 5 Things You Need To Know Right Now, Forbes (Dec. 21, 2019), available at <https://www.forbes.com/sites/leon-labrecque/2019/12/21/the-secure-act-and-your-401k-ira-5-things-you-need-to-know-right-now/?sh=7486e87b2ebb>.
4. FAQs - Auto Enrollment - What is an automatic contribution arrangement in a retirement plan?, IRS, available at <https://www.irs.gov/retirement-plans/faqs-auto-enrollment-what-is-an-automatic-contribution-arrangement-in-a-retirement-plan> (last visited February 20, 2023).
5. H.R. 2617, 117th Cong. § 101(a), (c) (2022).
6. *Id.*
7. H.R. 2617, 117th Cong. § 350(a) (2022).
8. H.R. 2617, 117th Cong. § 101(a) (2022).
9. *Id.*; see also Senate Finance Comm., 117th Cong., Overview of the SECURE 2.0 Act of 2022 (Dec. 20, 2022), at 1, available at https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf.
10. *Id.* at 2.
11. H.R. 2617, 117th Cong. § 107(a)-(c) (2022).

12. H.R. 2617, 117th Cong. § 107(e) (2022).
13. H.R. 2617, 117th Cong. § 327(a)-(c) (2022).
14. IRS Notice 2022-55, at 2.
15. H.R. 2617, 117th Cong. § 109(a)-(d) (2022).
16. H.R. 2617, 117th Cong. § 603(a), (c) (2022).
17. Senate Finance Comm., 117th Cong., Overview of the SECURE 2.0 Act of 2022 (Dec. 20, 2022), at 2, available at https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf.
18. H.R. 2617, 117th Cong. § 108(a)-(b) (2022).
19. PLR 201833012.
20. H.R. 2617, 117th Cong. § 110(a), (c)-(f) (2022).
21. Senate Finance Comm., 117th Cong., Overview of the SECURE 2.0 Act of 2022 (Dec. 20, 2022), at 2-3, available at https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf; see also H.R. 2617, 117th Cong. § 110(b) (2022).
22. H.R. 2617, 117th Cong. § 110(h) (2022).
23. H.R. 2617, 117th Cong. § 110(c) (2022).
24. Senate Finance Comm., 117th Cong., Overview of the SECURE 2.0 Act of 2022 (Dec. 20, 2022), at 18, available at https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf.
25. H.R. 2617, 117th Cong. § 604(a)-(d) (2022).
26. H.R. 2617, 117th Cong. § 604(e) (2022).
27. ECPRS Overview, IRS, available at <https://www.irs.gov/retirement-plans/ecprs-overview> (last visited February 20, 2023); see also Rev. Proc. 2021-30 (Jul. 16, 2021) and Rev. Proc. 2019-19 (May 6, 2019); see also Senate Finance Comm., 117th Cong., Overview of the SECURE 2.0 Act of 2022 (Dec. 20, 2022), at 17, available at https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf.
28. H.R. 2617, 117th Cong. § 350(a) (2022).
29. *Id.*
30. H.R. 2617, 117th Cong. § 350(b) (2022).
31. H.R. 2617, 117th Cong. § 305(a), (c), (d) (2022).
32. Senate Finance Comm., 117th Cong., Overview of the SECURE 2.0 Act of 2022 (Dec. 20, 2022), at 6, available at https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf; see also IRS Notice 2020-68, at 10-11.
33. H.R. 2617, 117th Cong. § 125(a), (f) (2022).
34. Staff of House Ways and Means Comm., 117th Cong., Overview of the Securing a Strong Retirement Act of 2021, at 4 (May 3, 2021), available at <http://waysandmeans.house.gov/wp-content/uploads/2021/05/SECURE-2.0-Section-by-section-5.3.21-1.pdf>.

35. H.R. 2617, 117th Cong. § 303(a) (2022).
36. *Id.*
37. *Id.*
38. Attribution of Ownership in Retirement Plans, Lincoln Financial Group, at 2-4, available at <https://www.lfg.com/wcs-static/pdf/Attribution%20of%20Ownership%20in%20Retirement%20Plans%20-%20PDF.pdf> (last visited February 20, 2023).
39. Allison Brecher, Top SECURE ACT 2.0 benefits for plan sponsors and participants, Benefits Pro (May 26, 2021), available at <https://www.benefitspro.com/2021/05/26/top-secure-act-2-0-benefits-for-plan-sponsors-and-participants/?sreturn=20210613112256>, which notes: “Under existing law, spouses in the nine community property states are automatically considered to own half of all property obtained during the marriage. As a result, business owners must bundle their business with their spouse when performing retirement plan coverage and nondiscrimination tests, which can be problematic, especially if there is a separation or family conflict.” See also IRM § 25.18.1.3.14 (03-04-2011), including § 3 therein: “When the business is operated after marriage, it has the effect of mixing separate property (the assets of the business) with community property (the spouse’s labor) . . . the presumption will be that the entire profit is community property.”
40. H.R. 2617, 117th Cong. § 315(a) (2022); see also Allison Brecher, Top SECURE ACT 2.0 benefits for plan sponsors and participants, Benefits Pro (May 26, 2021), available at <https://www.benefitspro.com/2021/05/26/top-secure-act-2-0-benefits-for-plan-sponsors-and-participants/?sreturn=20210613112256>, which notes: “The bill remedies this by removing attribution for spouses with separate and unrelated businesses who reside in community property states and between parents with separate and unrelated businesses who have minor children”.
41. Ted Godbout, Ways & Means to Mark Up SECURE Act 2.0, American Society of Pension Professionals & Actuaries (May 4, 2021), available at <https://www.asppa-net.org/news/ways-means-mark-secure-act-20>.
42. Letter of Support for the Securing a Strong Retirement Act, American Retirement Association (May 3, 2021), available at <https://www.napa-net.org/sites/napa-net.org/files/21.05.03%20ARA%20Letter%20of%20Support%20-%20Securing%20a%20Strong%20Retirement%20Act%20-%20FINAL-1.pdf>.
43. H.R. 2617, 117th Cong. § 314(a) (2022).
44. *Id.*
45. H.R. 2617, 117th Cong. § 314(b) (2022).
46. IRM § 4.72.2.7.2 (08-26-2020); see also IRM Exh. 4.72.2-1 (“Attachment One – Hardship Substantiation Information and Notifications for Summary of Source Documents”) (Aug. 26, 2020).
47. H.R. 2617, 117th Cong. § 312(a)-(c) (2022).
48. H.R. 2617, 117th Cong. § 602(a)-(b) (2022).
49. Jeffrey T. Grey, IRS Clarifies Amendment Period for Final Hardship Withdrawal Regulations, Society for Human Resource Management (Dec. 20, 2019), available at <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/irs-clarifies-amendment-period-for-final-hardship-withdrawal-regulations.aspx>.

50. IRS Hardship Distributions of Elective Contributions, Qualified Matching Contributions, Qualified Nonelective Contributions, and Earnings, 84 Fed. Reg. 4965, 49651-49659 (Sept. 23, 2019).
51. H.R. 2617, 117th Cong. § 602(a), (c) (2022).
52. Senate Finance Comm., 117th Cong., Overview of the SECURE 2.0 Act of 2022 (Dec. 20, 2022), at 1, available at https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf.
53. H.R. 2617, 117th Cong. § 102(a) (2022).
54. H.R. 2617, 117th Cong. § 111(a)-(b) (2022); see also Senate Finance Comm., 117th Cong., Overview of the SECURE 2.0 Act of 2022 (Dec. 20, 2022), at 3, available at https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf.
55. For more information on the difference between PEPs and MEPs, as well as SECURE 1.0's creation of PEPs and PEP requirements, see Stephen Miller, DOL Final Rule Paves the Way for 2021 Launch of Pooled 401(k) Plans, Society for Human Resource Management (Nov. 16, 2020), available at <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/dol-final-rule-paves-way-for-2021-launch-of-pooled-401k-plans.aspx>; see also Press Release, Dept. of Labor, U.S. Department of Labor Announces Registration Requirements for Pooled Plan Providers (Nov. 12, 2020), available at <https://www.dol.gov/newsroom/releases/ebsa/ebsa20201112>; see also Registration Requirements for Pooled Plan Providers, 85 Fed. Reg. 7293, 72934-72956 (Nov. 16, 2020).
56. H.R. 2617, 117th Cong. § 106(a)-(c), (h) (2022).
57. H.R. 2617, 117th Cong. § 102(b) (2022).
58. H.R. 2617, 117th Cong. § 102(b), (d) (2022).
59. H.R. 2617, 117th Cong. § 112(a) (2022).
60. H.R. 2617, 117th Cong. § 113(a)-(d) (2022).
61. H.R. 2617, 117th Cong. § 127(a)-(b) (2022).
62. H.R. 2617, 117th Cong. § 127(a)-(b), (g) (2022).
63. H.R. 2617, 117th Cong. § 127(a)-(b) (2022).
64. H.R. 2617, 117th Cong. § 115(a), (c) (2022).
65. See, e.g., H.R. 2617, 117th Cong. §§ 326, 331 (2022).
66. H.R. 2617, 117th Cong. § 301(a)-(b) (2022).
67. H.R. 2617, 117th Cong. § 302(a)-(b) (2022).
68. H.R. 2617, 117th Cong. §§ 201-202 (2022).
69. H.R. 2617, 117th Cong. § 322(a)-(b) (2022).
70. H.R. 2617, 117th Cong. § 320(a)-(b) (2022).
71. H.R. 2617, 117th Cong. § 319(a) (2022).
72. H.R. 2617, 117th Cong. § 349(a) (2022).
73. H.R. 2617, 117th Cong. § 501(a)-(b) (2022).

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