

Discretionary provisions



Building on the SECURE Act of 2019, the SECURE 2.0 Act is a law designed to help Americans save more for retirement with more options and improved access to retirement plans. It includes several provisions that impact specific types of retirement plans, including the following.

Immediately effective or effective January 1, 2024

§ 604: Optional treatment of matching or nonelective contributions as Roth

401(a), 403(b), and governmental 457(b) plans may permit an employee to designate fully vested matching contributions or nonelective contributions as Roth contributions.

Effective: Contributions after December 29, 2022

Impact/actions: Employers may adopt this provision on the later of effective date or first date Transamerica can support this provision.

§ 110: Plan match based on student loan payments

Employers may make matching contributions to a 401(k), 403(b), or governmental 457(b) plan, or to a SIMPLE IRA based on “qualified student loan payments.”

- Employers may rely on the employee’s self-certification as to the amount of the qualified student loan payments made for the plan year.
- Employers may perform separate nondiscrimination testing with respect to participants who receive matching contributions on student loan repayments.

Effective: Plan years after December 31, 2023

Impact/actions: Employers may adopt this provision now.

§ 115: Withdrawals for certain emergency expenses

401(k), 403(b), and governmental 457(b) plans may be amended to allow one withdrawal of up to \$1,000 per year for emergency personal expenses, to the extent any emergency expense distributions that were previously withdrawn have been either repaid or recontributed to the plan through deferrals.

- Participants may self-certify that their request satisfies the requirements of this provision.
- Withdrawal may be repaid within three years, is not subject to the 10% penalty generally assessed on withdrawals prior to age 59½, is not subject to mandatory withholding, and is not eligible for rollover.

Effective: Distributions after December 31, 2023

Impact/actions: Employers may adopt this provision now.

§ 331: Use of funds for qualified federally declared disasters

Qualified 401(a), 403(a), 403(b), and governmental 457(b) plans may be amended to allow participants who have suffered an economic loss as a result of a federally declared disaster to withdraw up to \$22,000 per qualified disaster and allow participants who have taken a hardship withdrawal to purchase a principal residence in the disaster area to return that hardship withdrawal to the plan if the purchase did not take place as a result of the disaster.

- The withdrawal will be taxed ratably to the participant over three years unless the participant elects full taxation in the year of withdrawal.
- Withdrawal may be repaid within three years, is not subject to the 10% penalty generally assessed on withdrawals prior to age 59½, is not subject to mandatory withholding, and is not eligible for rollover.

Effective: Disasters where incident period begins on or after January 26, 2021

Impact/actions: Employers may adopt this provision now.

§ 314: Withdrawals from retirement plans for victims of domestic abuse

Plans that are not subject to spousal consent may be amended to add an in-service distribution for victims of domestic abuse.

- Limit is the lesser of \$10,000 or 50% of the participant's nonforfeitable accrued benefit.
- Participants may self-certify that their request satisfies the requirements of this provision.
- Withdrawal may be repaid within three years, is not subject to 10% penalty generally assessed on withdrawals prior to age 59½, is not subject to mandatory withholding, and is not eligible for rollover.

Effective: Distributions made after December 31, 2023

Impact/actions: Employers may adopt this provision now.

§ 127: Emergency savings accounts linked to individual account plans

Plan sponsors may permit non-highly compensated employees to make Roth contributions to a “pension-linked emergency savings account” (PLESA).

- Total PLESA contributions are limited to \$2,500, or a lower amount as set by employer; no minimum contribution or account balance requirements may be set.
- Monthly withdrawals (whole or in part) must be permitted, and the first four withdrawals each year must be free of fees or charges due to the withdrawals; withdrawals come out as qualified Roth distributions regardless of time held or participant age.
- Once contributions to the PLESA reach maximum limit, contributions may be directed to employee’s defined contribution Roth account or stopped, per the participant’s election.
- Plans may automatically enroll participants in the PLESA at a rate not to exceed 3%, or may allow for affirmative election into the PLESA.
- PLESA contributions must be taken into account with respect to the plan’s match. Plan sponsors may take regular deferrals into consideration prior to PLESA contributions when calculating the match; employers may not forfeit matching contributions attributable to withdrawn PLESA contributions nor suspend the match as a result of PLESA withdrawals.
- The PLESA source must be held in cash, an interest-bearing account, or an investment product designed to maintain the dollar value equal to the amount invested in the product over the term of the investment.

Effective: Plan years after December 31, 2023

Impact/actions: Employers may adopt this provision on the later of effective date or first date Transamerica can support this provision.

§ 312: Employer may rely on self-certification for hardship withdrawals

For hardship withdrawals from a 401(k) or 403(b) plan utilizing the safe harbor hardship withdrawal reasons, administrators may rely on a written employee certification that the request is for one of the permitted reasons and the amount requested does not exceed the amount of the financial need.

- This is in addition to the currently permitted self-certification that the participant has no reasonable alternative means available.
- Mirror changes apply to withdrawals due to unforeseeable emergencies from 457(b) plans.
- The ability to rely on self-certification does not extend to plans that do not use the safe harbor hardship withdrawal reasons.

Effective: Plan years after December 29, 2022

Impact/actions: Employers may adopt this provision now.

§ 320: Eliminating unnecessary reporting to unenrolled participants

Disclosures, notices, and other plan documents otherwise required to be provided to participants by the DOL or IRS are not required to be provided to an “unenrolled participant,” as long as the participant was given all required notices upon initial eligibility and is given an annual reminder notice of his or her eligibility to participate in the plan and any applicable election deadlines under the plan.

Effective: Plan years after December 31, 2022

Impact/actions: Employers may adopt this provision now.

§ 113: Small immediate financial incentives for contributions

Plan sponsors may provide “de minimis financial incentives” to employees who elect to make deferrals into a 401(k) or 403(b) plan, provided that plan assets are not used to pay for the incentives. Per IRS guidance, “de minimis” means not more than \$250; incentives may also be provided in installments (not to exceed \$250 in aggregate), and subsequent installments may be made contingent on continued participation. De minimis financial incentives cannot be provided to participants with deferral rates in effect, and amounts must be reported as taxable to the employee.

Effective: Plan years after December 29, 2022

Impact/actions: Provision available for use now; no Transamerica involvement in use or implementation.

§ 316: Amendments to increase benefit accruals for previous plan year

Retroactive discretionary plan amendments are generally permitted if they increase accrued benefits during the immediately preceding plan year. The amendments must be adopted before the employer’s tax filing deadline (with extensions) for the year for which the amendment was effective.

Effective: Plan years after December 31, 2023

Impact/actions: Employers may apply this provision as/if needed after its effective date.

§ 112: Military spouse eligibility credit for small employers

Creates a new tax credit for certain small employers who permit non-highly compensated military spouses to join the plan after two months of service. They must receive any employer matching or nonelective contributions that they otherwise would have been eligible for upon two years of service and be made fully vested in those contributions.

Effective: Taxable years after December 29, 2022

Impact/actions: Eligible employers may amend plan as applicable to claim tax credit.

§ 120: Exemption for certain automatic portability transactions

Allows plans to use an automatic portability service provider to automatically transfer amounts held in a participant’s default IRA into their new employer’s plan, unless the participant elects otherwise. Creates a statutory exemption under the Internal Revenue Code providing relief for receipt of fees and compensation by an automatic portability service provider in connection with an automatic portability transaction; fiduciaries of recipient plan must review and approve transaction fees.

Effective: Transactions on or after December 29, 2023

Impact/actions: Recipient plan fiduciary to review and approve any transaction fees charged by service provider.

§ 606: Enhancing retiree health benefits in pension plans

Extends date until which defined benefit plans may allow transfers to pay retiree health and life insurance benefits to December 31, 2032. If certain requirements are met, transfers are permitted for defined benefit plans for which plan assets exceed 110% (reduced from 120% or 125%) of the sum of the funding target and the target normal cost of the plan.

Effective: Transfers after December 29, 2022

Impact/actions: Discretionary

Effective after January 1, 2024

§ 318: Performance benchmarks for asset allocation funds

Amends ERISA to permit the use of a benchmark for designated investment alternatives that contain a mix of asset classes blending different broad-based securities market indices, as long as the requirements of the provision are satisfied.

Effective: Regulations to be modified no later than December 29, 2024.

Impact/actions: Discretionary

§ 341: Consolidation of defined contribution plan notices

The Secretaries of Labor and Treasury are required to adopt regulations providing that a plan may, but is not required to, consolidate the QDIA notice, the participant fee and investment disclosure, the safe harbor notice, the auto enrollment safe harbor notice, and/or the permissible withdrawal notice.

Effective: Revised regulations to be issued by December 29, 2024.

Impact/actions: Discretionary

§ 334: Long-term care contracts purchased with plan distributions

Allows in-service withdrawals from retirement plans to pay long-term care insurance premiums in certain circumstances.

- Withdrawal maximum is the smallest of \$2,500 per year, 10% of the participant's vested balance, or the amount paid for the coverage.
- Withdrawals must be for payment of premiums for "certified long term care" insurance for participant or his or her spouse.
- Premiums for other family members may be allowed, to the extent provided for by regulation.

Effective: Distributions after December 29, 2025

Impact/actions: Discretionary

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