



# SECURE 2.0

ACT OF 2022

## MORE SECURE 2.0 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 a variety of provisions that may impact certain employer retirement plans, including the following.

### PROVISIONS RELATED TO PLAN INVESTMENTS

#### § 203: INSURANCE-DEDICATED EXCHANGE-TRADED FUNDS

Regulations and guidance to be amended to facilitate use of exchange traded funds (ETFs) as investment options under variable contracts and permit beneficial interests in such funds to be held by one or more authorized participants or market makers.

**Effective:** Applicable to investments made on or after December 29, 2029

**Impact/actions:** No current action required

### PROVISIONS RELATED TO TAXATION ON PARTICIPANT DISTRIBUTIONS

#### § 302: REDUCTION IN EXCISE TAX ON CERTAIN ACCUMULATIONS IN RETIREMENT PLANS

The excise tax for failure to take an RMD is reduced from 50% to 25%. The excise tax is further reduced on certain RMD failures (from 25% to 10%) provided certain requirements are met and the failure is corrected during a two-year correction window.

**Effective:** Taxable years after December 29, 2022

**Impact/actions:** No plan sponsor action required at this time

#### § 308: DISTRIBUTIONS TO FIREFIGHTERS

Distributions to private sector firefighters from a 401(a) or 403(b) plan after the employee separates from service after age 50 are now exempted from the 10% early withdrawal penalty as “qualified public safety employees,” creating parity with the treatment of distributions to public sector firefighters.

**Effective:** Distributions made after December 29, 2022

**Impact/actions:** No plan sponsor action required



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### **§ 309: EXCLUSION OF CERTAIN DISABILITY-RELATED FIRST RESPONDER PAYMENTS**

Qualified retirement payments to first responders will no longer be included in the individual's gross income for any taxable year as long as payments do not exceed the annualized excludable disability amount for the individual.

**Effective:** Amounts received with respect to taxable years after December 31, 2026

**Impact/actions:** No plan sponsor action required

### **§ 326: EXCEPTION TO EARLY DISTRIBUTION PENALTY FOR TERMINALLY ILL PARTICIPANTS**

Distributions to terminally ill individuals are exempt from the early withdrawal penalty if made on or after the date the individual has been certified by a physician as having an illness that will result in death within 84 months. The individual must furnish sufficient evidence to the plan administrator.

**Effective:** Distributions after December 29, 2022

**Impact/actions:** No plan sponsor action required at this time

### **§ 329: MODIFIED ELIGIBLE AGE FOR EXEMPTION FROM EARLY WITHDRAWAL PENALTY**

The exemption from the 10% early withdrawal penalty on distributions made to qualified public safety employees from a governmental plan is expanded to include separation from service after attainment of age 50 or 25 years of service under the plan, whichever is earlier.

**Effective:** Distributions made after December 29, 2022

**Impact/actions:** No plan sponsor action required at this time

### **§ 330: CERTAIN CORRECTIONS WORKERS EXEMPT FROM EARLY WITHDRAWAL PENALTY**

Employees providing services as a corrections officer or a forensic security employee (those who provide for the care, custody, and control of forensic patients) are now included in the definition of qualified public safety employees who qualify for an exception to the 10% early withdrawal penalty.

**Effective:** Distributions made after December 29, 2022

**Impact/actions:** No plan sponsor action required at this time

## **PROVISIONS ABOUT PLAN-RELATED ANNUITIES**

### **§ 201: REMOVE REQUIRED MINIMUM DISTRIBUTION BARRIERS FOR LIFE ANNUITIES**

Required minimum distributions rules amended to permit certain specified increases to annuity payments, certain lump-sum distributions, certain distributions that are in the nature of a dividend, and certain payments upon death.

**Effective:** Calendar years ending after December 29, 2022

**Impact/actions:** Discretionary

## **SPECIAL NEEDS RMD RULES**

### **§ 337: MODIFICATION OF RMD RULES FOR SPECIAL NEEDS TRUSTS**

For an "applicable remainder multi-beneficiary trust" (AMBT) that names a "qualified charity" as beneficiary, the charity is treated as a "designated beneficiary" for purposes of the rules that apply to AMBTs.

**Effective:** Calendar years after December 29, 2022

**Impact/actions:** Generally applicable to all plans

## TRIBAL DOMESTIC RELATIONS ORDER RULES

### § 339: RECOGNITION OF TRIBAL GOVERNMENT DOMESTIC RELATIONS ORDERS

Tribal government courts are permitted to issue domestic relations orders (DROs) that may be a qualified DRO (in addition to any orders pursuant to state law).

**Effective:** December 31, 2022 (including orders submitted for reconsideration)

**Impact/actions:** DRO qualification procedures must be revised to reflect this change

## PROVISIONS RELATED TO PLAN CORRECTIONS

### § 301: RECOVERY OF RETIREMENT PLAN OVERPAYMENTS

Grants tax qualification and fiduciary relief to sponsors of 401(a), 403(a), and 403(b) plans if they do not seek recovery of inadvertent overpayments, or amend the plan to increase or decrease benefits, subject to applicable conditions and restrictions.

**Effective:** Immediately

**Impact/actions:** Discretionary correction methodology

### § 305: EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM (EPCRS) EXPANSION

Expands the self-correction program under EPCRS to permit its use at any time for any eligible "inadvertent" failure, including failures related to loan errors, if certain conditions are met, and to the extent not prohibited under the interim guidance issued by the IRS earlier in 2023.

**Effective:** December 29, 2022; IRS to update guidance by December 29, 2024

**Impact/actions:** Discretionary correction methodology

### § 350: SAFE HARBOR FOR CORRECTIONS OF EMPLOYEE ELECTIVE DEFERRAL FAILURES

Makes permanent the current safe harbor method for correcting, without penalty, reasonable errors in administering automatic enrollment and automatic escalation features for 401(a) and 403(b) plans and extends the provisions to 408 and 457(b) plans.

**Effective:** Corrections of automatic enrollment or automatic escalation errors after December 31, 2023

**Impact/actions:** Discretionary correction methodology

