



The Certified Employee  
Benefit Specialist® Program

**RPA1** Directing Retirement  
Plans—Part 1

**RPA2** Directing Retirement  
Plans—Part 2

**GBA/RPA3** Strategic Benefits  
Management

## Study Materials Update—April 2023

This material is required reading for purposes of the CEBS® program and the national exams for the RPA 1, RPA 2 and GBA/RPA 3 courses administered on or after July 15, 2023.

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## How to Use This Update

Keep this update with your study materials. It should be read in conjunction with the assigned reading for RPA 1, RPA 2 and GBA/RPA 3.



# RPA 1: Directing Retirement Plans Part 1, RPA 2: Directing Retirement Plans Part 2 and GBA/RPA 3: Strategic Benefits Management

**Student Note:** The SECURE 2.0 Act entails significant changes to prior law. This update is being provided to acquaint CEBS students with these changes and to update the course material for RPA 1, RPA 2 and the Strategic Benefits Management course (GBA/RPA 3). Again, the changes are significant. Accordingly, every effort is being made to highlight the changes and present them in a manner that is manageable for understanding and comprehension. This update provides the following.

## **I. SECURE 2.0 Highlights for Retirement Plan Sponsors**

This client alert, published by Ice Miller Legal Counsel, arranges the legislative changes by policy themes so that students can connect modifications in the law to policy objectives and thus understand the outcomes of the SECURE 2.0 Act. Each item provides a brief overview of the legal change followed by information about the type of plan impacted, the effective date of change and whether the provision is mandatory or optional. The client alert concludes with action steps and amendment deadlines for plan sponsors.

**Students are expected to be familiar with the overview. CEBS-related content from the client alert is subject to inclusion on CEBS examinations effective on or after July 15, 2023.**

## II. SECURE 2.0 Act Legislation Includes Changes to Individual Retirement Accounts

This corporate alert, published by K&L Gates LLP, delves into provisions of the Act that impact individual retirement accounts (IRAs) likely to be applicable to plan sponsor issues relating to strategic plan design or participant retirement planning decisions.

**Students are expected to be familiar with these more detailed explanations. Content from the corporate alert is subject to inclusion on CEBS examinations effective on or after July 15, 2023.**

***Student Note:*** Given the extensive changes mandated by the SECURE 2.0 Act, there will invariably be significant regulatory advice forthcoming to clarify various provisions of the legislation. When such clarifications are issued, it is anticipated that there could be future updates issued for these courses. As is the case with this update, students in the CEBS program will be advised as to when the material contained in any updates will be included on the CEBS national examinations.



January 17, 2023  
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- Workplace Solutions - Employee Benefits
- 401(k) Plans
- 403(b) Plans
- 457 Plans
- Health and Fringe Benefit Plans
- Government Benefit Plans
- Retirement Plans

**Secure 2.0 Highlights for Retirement Plan Sponsors**

For the second time in four years, a Congressional holiday miracle included one of the largest packages of tax law changes for retirement plans and individual retirement savings in history. On December 29, 2022, President Biden signed into law the Consolidated Appropriations Act, 2023, a \$1.7 trillion omnibus package that was passed on December 23 and includes the much anticipated "SECURE 2.0" retirement reform legislation. SECURE 2.0 Act of 2022, which builds on the original Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE 1.0"), is the end product of three separate retirement bills that have been circulating in Congress for two years. While most of the provisions included in SECURE 2.0 have been under consideration in various forms, retirement plan sponsors have been awaiting final passage to understand the specific changes that will impact their employees and retirees.

SECURE 2.0 includes approximately 90 separate provisions and impacts virtually all aspects of retirement savings for American workers. Some provisions took effect on January 1, 2023, but most take effect over the next few years. This client alert focuses on the provisions that we believe will be of most interest to retirement plan sponsors, including public and private employers, public pension systems, university systems, and church plans. It is not comprehensive, and there may be other provisions not covered here that will impact plan administration. We will be working with our clients in the coming months to make sure that they are aware of their new legal responsibilities and options under SECURE 2.0.

**Highlights of Secure 2.0 for Plan Sponsors**

**(More) Changes to Required Minimum Distribution (RMD) Rules**

Overview	Type of Plan Impacted	Effective Date of Change	Mandatory or Optional
<b><u>Increase in the required beginning date.</u></b>	401(k) 401(a) DC 401(a) DB 403(b)	Effective for RMDs made after 2022 for employees	Mandatory
Plan sponsors will once again be			

Overview	Type of Plan Impacted	Effective Date of Change	Mandatory or Optional
<p>amending their plans—and service providers will be reprogramming their systems—to increase the age at which retired participants must commence payments from retirement plans. Generally, a participant must begin receiving required minimum distributions (RMDs) from a plan no later than April 1 of the calendar year following the later of the calendar year in which the employee attains age 72 (increased from 70 ½ under SECURE 1.0), or (except for IRAs) the calendar year in which the employee retires. SECURE 2.0 replaces "age 72" with the "applicable age," which is determined as follows:</p> <ul style="list-style-type: none"> <li>• For employees who turned age 72 <u>before 2023</u>, the applicable age is age 72 (or age 70 ½ if they were born before July 1, 1949).</li> <li>• For employees who will turn age 72 <u>after 2022 and</u> age 73 <u>before 2033</u>, the applicable age now is age 73.</li> <li>• For employees who will turn age 74 <u>after 2032</u>, the applicable age now is age 75.</li> </ul>	457(b) IRAs	who turn age 72 after 2022	
<p><b><u>Pre-death RMDs no longer required from designated Roth accounts.</u></b></p> <p>To align with the rules for Roth IRAs, SECURE 2.0 eliminates the requirement that RMDs be taken from designated Roth accounts under a 401(k), 403(b), or governmental 457(b) plan during the participant's lifetime. Retired participants who want to minimize RMDs will no longer need to roll over their retirement plan Roth accounts to an outside Roth IRA to avoid lifetime payments from those accounts. This may result in more participants keeping their accounts with their former employers/plans post-retirement. This change also is likely to increase the popularity of Roth accounts in retirement plans and demand to include in-plan Roth rollover features.</p>	401(k) 403(b) 457(b) gov.	Effective for taxable years beginning after 2023, but not applicable to RMDs required for years beginning before 2024	Mandatory
<p><b><u>Reduction in excise tax penalty.</u></b></p>	401(k) 401(a) DC	Effective for taxable years	Mandatory and

Overview	Type of Plan Impacted	Effective Date of Change	Mandatory or Optional
Under current law, taxpayers are subject to a 50% excise tax on the amount of an RMD that they fail to take by the applicable deadline. SECURE 2.0 reduces the penalty tax to 25%. The penalty tax is further reduced to 10% if the failure to take the RMD is corrected within a two-year window period as specified in SECURE 2.0.	401(a) DB 403(b) 457(b) IRAs	beginning after 12/29/22	automatic ( <i>no plan action required</i> )
<b><u>Surviving spouse election to be treated as employee.</u></b>	401(k) 401(a) DC 401(a) DB 403(b) 457(b)	Effective for calendar years after 2023	Mandatory ( <i>if elected by surviving spouse</i> )
Similar to rules that apply to IRAs, SECURE 2.0 extends to a surviving spouse the irrevocable right to elect to be treated as the deceased employee for purposes of the RMD rules and, if the surviving spouse is the sole designated beneficiary, applies the uniform life table in determining the distribution period.			
<b><u>Treatment of partial annuitization.</u></b>	401(k) 401(a) DC 403(b) 457(b) IRAs	Effective 12/29/22	Optional
Current rules provide that if a participant partially annuitizes his or her account, the annuitized portion and remainder of the account are treated separately under the RMD rules. This treatment may result in a larger RMD requirement than if the participant did not partially annuitize their account. SECURE 2.0 permits a plan to allow the participant to aggregate distributions from the annuity and the remaining account in determining whether the RMD requirements are satisfied.			
<b>Provisions to Increase Participation and Savings</b>			
Overview	Type of Plan Impacted	Effective Date of Change	Mandatory or Optional
<b><u>Higher catch-up limit for older employees.</u></b>	401(k) 403(b) 457(b) gov.	Effective for taxable years beginning after 2024	Optional
Under current law, a 401(k) plan, 403(b) plan, or governmental 457(b) plan may permit participants who will be age 50 or			

older by the end of the year to make deferrals to the plan in excess of the general elective deferral limit in effect for that year, up to a separate "age 50 catch-up" limit (\$7,500 for 2023). SECURE 2.0 increases the catch-up limit for the years in which the participant attains ages 60, 61, 62, and 63. The increased limit is the greater of (i) \$10,000 (indexed after 2025) or (ii) an amount equal to 150% of the normal catch-up limit for 2024 (\$11,250 in 2023).

**Matching contributions on qualified student loan payments.**

SECURE 2.0 permits employers to make matching contributions on behalf of participants in a 401(k) plan or 403(b) plan with respect to qualified student loan payments, in the same manner as if those payments were elective deferrals to the plan. Governmental employers also may make matching contributions on behalf of participants in a 457(b) plan, 401(a) plan, or 403(b) plan with respect to qualified student loan payments. The change seeks to enhance retirement security for employees who delay making elective deferrals because of their obligations to repay student debt and, therefore, miss out on matching contributions. The law permits employers to rely on an employee's self-certification of payment of a qualified student loan repayment, which is defined as a payment on a loan incurred by the employee to pay qualified higher education expenses of the employee. For plans subject to nondiscrimination testing, it also permits separate testing for employees who receive matching contributions on student loan repayments.

401(k) Effective Optional  
 403(b) for plan  
 457(b) years  
 gov. beginning  
 401(a) DC after 2023  
 gov.  
 403(b)  
 gov.

**Small immediate financial incentives for contributing to the plan.**

Under current law, employers are not permitted to induce participation in a 401(k) plan or 403(b) plan by providing immediate financial incentives. SECURE 2.0 permits "de minimis financial incentives" that are not paid from plan assets to be offered in connection with an employee's decision to make elective deferrals to the plan. The term "de minimis financial incentives" is not defined in the Act, but is understood to include low-dollar value gift cards and

401(k) Effective Optional  
 403(b) for plan  
 years  
 beginning  
 after  
 12/29/22

similar small incentives that are intended to motivate employees to participate in the plan.

**Emergency savings accounts.**

An employer may offer an emergency savings account to its non-highly compensated employees in connection with an ERISA-covered 401(k) plan or 403(b) plan. Contributions are made by participants only on a Roth basis, are capped at \$2,500 (indexed) or a lower limit set by the employer, and are eligible for matching contributions in the linked plan. Employers can automatically opt employees into an emergency savings account at up to 3% of salary. Excess contributions can be allocated to the participant's designated Roth account under the plan. Withdrawals are permitted from the savings account at least monthly, are not subject to the 10% early withdrawal penalty tax, and the first four withdrawals in the same year may not be subject to any fees or charges. The balance of the emergency savings account can be rolled over to another designated Roth account or Roth IRA at termination of employment. Plan sponsors that wish to add an emergency savings account must meet certain disclosure requirements to notify participants of this option. This provision is effective for plan years after December 31, 2023.

ERISA 401(k) Effective for plan years beginning after 2023 Optional

**Automatic enrollment expanded.**

SECURE 2.0 requires 401(k) and 403(b) plans to automatically enroll participants at a 3 – 10% deferral rate upon becoming eligible, unless the employee makes an affirmative election to opt out of coverage or to defer at a different rate. The deferral rate is required to automatically escalate at 1% each calendar year thereafter, until it reaches 10 – 15% (a 10% cap applies until 2025 for certain plans). The automatic contribution arrangement must meet the eligible automatic contribution arrangement (EACA) rules, which permit automatically enrolled participants to withdraw their deferrals within a 90-day period. Significantly, this provision applies to plans established after December 29, 2022, only, and exempts small employers, new businesses, church plans, and

401(k) 403(b) Effective for plan years beginning after 2024 Mandatory

governmental plans.

**Part-time worker coverage expanded.**

401(k) ERISA 403(b) Effective for plan years beginning after 2024 Mandatory

SECURE 1.0 requires coverage for long-term, part-time workers in 401(k) plans for purposes of elective deferrals. Employers maintaining a 401(k) plan must allow an employee who completed (i) one year of service with 1,000 hours or (ii) three consecutive years of service with 500 hours, to make elective deferrals under the plan. SECURE 2.0 reduces the three years under (ii) to two years and expands the rule to 403(b) plans. This provision does not apply to collectively bargained employees.

**Additional investment options for 403(b) plans.**

403(b) Effective 12/29/22 Optional

401(a) plans can invest in a wide variety of investment options, while 403(b) plan investments are limited to annuity contracts and mutual funds held in custodial accounts. SECURE 2.0 expands the investment options available under 403(b) plans to allow custodial accounts to participate in collective investment trusts (CITs). SECURE 2.0 did not include certain needed changes to the securities laws, however, so additional guidance is needed before 403(b) plans can take advantage of this change.

**Automatic portability transactions.**

401(k) 401(a) DC 401(a) DB 403(b) 457(b) gov. Effective 12/29/23 Optional

Under current law, plan sponsors may make mandatory cash-outs of the small account balances of terminated participants (accounts under \$5,000, which increases to \$7,000 under SECURE 2.0). Accounts over \$1,000 must be rolled to a default IRA if the participant does not make an affirmative election with respect to the account. Beginning in 2024, SECURE 2.0 allows employers to contract with a service provider that will automatically transfer a default IRA to a participant's new employer-sponsored retirement plan, unless the participant elects otherwise. The automatic transfer will be subject to a 60-day advance notice requirement, fee disclosures, individual opt-out rights, post-transaction notice requirements, and audit requirements. The objective of the change is to consolidate small account balances and reduce leakage from the retirement

system.

<b><u>Exclusion from gross income of disability-related retirement payments for first responders.</u></b>	401(a) DB	Effective	Mandatory
	401(a) DC	for plan	
	403(b)	years	
	457(b) gov.	beginning after 2026	

Under current law, a retiree's disability benefit that is excluded from income under Code Section 104(a) under a statute in the nature of worker's compensation loses its tax exemption at normal retirement age if the disability benefit converts to a normal retirement benefit. Under SECURE 2.0, for first responders, the service-connected disability benefit under a pension or annuity retains its tax-exemption even if the benefit converts to a normal retirement benefit.

### Greater Flexibility for Penalty-Free Withdrawals

Distributions from retirement plans are not permitted until a participant has experienced a distributable event that permits a distribution from that type of plan or account. Distributable events vary depending on the type of plan, but include termination of employment, financial hardship, attainment of age 59 ½, disability, and death. When a distribution is permitted before the attainment of age 59 ½ (e.g., upon a severance from employment or financial hardship), a 10% early withdrawal penalty tax applies to the distribution unless an exception applies. There are a number of listed exceptions to this penalty under current law.

SECURE 2.0 adds several new provisions that allow plan sponsors of defined contribution plans to permit participants the ability to access a portion of their retirement savings while still working, even if they are not otherwise eligible to take a distribution. These distributions are exempt from the 10% early withdrawal penalty tax, and, in most cases, the participants have the opportunity to repay the distribution (and receive a refund on taxes previously paid on the distribution) if certain timing requirements are met.

Even if a plan does not offer an optional distribution, if a participant who is otherwise eligible for a distribution receives a distribution that qualifies under one of the following provisions, the participant may treat the distribution as qualifying for the favorable tax treatment when completing his or her personal tax return.

<b>Overview</b>	<b>Type of Plan Impacted</b>	<b>Effective Date of Change</b>	<b>Mandatory or Optional</b>
<b><u>Personal or family emergency expense distributions.</u></b>	401(a) DC 401(k) 401(a) PSP	Effective for distributions made after 2023	Optional
Under SECURE 2.0, a distribution from a defined contribution plan or IRA (but note that a new distribution right was not added for money purchase pension plans) that qualifies as an emergency personal expense distribution is not subject to the 10%	403(b) 457(b) gov. IRAs		

early distribution penalty tax. Only one emergency distribution is permitted per calendar year, which cannot exceed the lesser of (i) \$1,000 or (ii) the employee's vested account in excess of \$1,000. An emergency personal expense distribution is a distribution for purposes of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses. The plan administrator may rely on the individual's certification that the distribution qualifies under this standard. An amount distributed on this basis is not eligible for rollover. The distribution can be repaid within three years. No further emergency distributions are permissible during the three-year repayment period unless repayment occurs (or subsequent employee deferrals equal the amount of the distribution).

**Qualified birth or adoption distributions.**

Distributions on account of a qualified birth or adoption (QBAD) were permitted under SECURE 1.0 from a defined contribution plan or IRA (but note that a new distribution right was not added for money purchase pension plans), and the amount of such distribution is tax-free if it is recontributed to the plan at any time. This unlimited timeframe for recontribution created a tax issue because taxpayers are prevented from receiving a refund on past taxes paid following a three-year open tax period. To address this, SECURE 2.0 amends the QBAD provision to limit the recontribution period to three years from the date the distribution was received.

401(a) DC  
401(k)  
401(a) PSP  
403(b)  
457(b) gov.  
IRAs

Effective for distributions made after 12/29/22, and retroactively effective to the three year period beginning on the day after a QBAD distribution was received

Optional

**Domestic abuse victim distributions.**

Eligible distributions to a domestic abuse victim of up to the lesser of (i) \$10,000 (indexed) or (ii) 50% of the present value of the participant's accrued benefit under a defined contribution plan are not subject to

401(k)  
401(a) PSP  
401(a) MPP  
gov./church  
403(b)  
457(b) gov.  
IRAs

Effective for distributions made after 2023

Optional

the 10% early withdrawal penalty tax under Code Section 72(t). An eligible distribution must be made within the one-year period beginning on any date in which the individual is a victim of domestic abuse by a spouse or domestic partner. The plan administrator may rely on the individual's certification that the distribution qualifies under this standard. An amount distributed on this basis is not eligible for rollover, and can be repaid within three years of the date of distribution. This type of distribution is not available under a money purchase pension plan, unless a governmental or church plan.

<b><u>Relief from 10% early withdrawal penalty for terminal illness distributions.</u></b>	401(k) 401(a) DC 401(a) DB 403(b)	Effective for distributions made after 12/29/22	Optional
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Distributions to an employee who is a "terminally ill individual" are not subject to the 10% early withdrawal penalty tax and can be repaid within three years. For this purpose, a terminally ill individual means an individual who has been certified by a physician as having an illness or physical condition that can reasonably be expected to result in death in 84 months or less after the date of the certification. The employee must furnish sufficient proof to the plan administrator that the employee qualifies under this standard. This provision does not create a new distribution right under retirement plans, so a participant would need to be eligible for a distribution under an existing rule.

<b><u>Qualified federally declared disasters distributions.</u></b>	401(k) 401(a) DC 401(a) DB 403(b)	Effective for distributions with respect to disasters the incident period for which begins on or after January 26, 2021	Optional
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A retirement plan or IRA may permit a qualified disaster recovery distribution of up to an aggregate \$22,000 if made within 180 days after the first day of the incident period applicable to a qualified disaster, if the individual's principal place of residence is within the qualified disaster area and the individual has sustained economic loss due to the

qualified disaster. The plan administrator may rely on the individual's certification that the distribution qualifies under this standard. An amount distributed on this basis is not eligible for rollover. In addition, the distribution is not subject to the 10% early withdrawal penalty tax, is taxed over three years, and can be repaid within three years. This provision also permits an increase in loans, and delayed repayment of loans, during the 180-day period following the first day of the incident period.

**Long-term care contract distributions.**

SECURE 2.0 permits defined contribution plans to allow a distribution of up to the lesser of (i) \$2,500 (indexed) or (ii) 10% of the present value of the participant's vested accrued benefit under the plan per year to the participant to pay premiums for certain long-term care insurance contracts for the employee or the employee's spouse (or other family member as provided by regulation). The distributions are not subject to the 10% early withdrawal penalty tax and are not eligible for rollover. Certain reporting requirements apply.

401(k)	Effective for	Optional
401(a) DC	distributions	
403(b)	made after	
457(b)	12/29/25	

**Distributions to public safety officers.**

Under current law, the 10% early withdrawal penalty does not apply to distributions that are made to an employee who separates from service after age 55. This age is reduced to 50 for qualified public safety officers with respect to distributions received from a governmental plan. SECURE 2.0 expands this exception to apply to distributions made to qualified public safety officers who separate from service after the earlier of (i) age 50 or (ii) 25 years of service under the plan. In addition, SECURE 2.0 expands the definition of a "qualified public safety officer" to include governmental corrections officers and

401(k)	Effective for	Mandatory
401(a) DC	distributions	and
401(a) DB	made after	automatic
403(b)	12/29/22	( <i>no plan</i>
457(b) gov.		<i>action</i>
		<i>required</i> )

forensic security employees.

<b><u>Distributions to private sector firefighters.</u></b>	401(k) 401(a) DC 401(a) DB 403(b)	Effective for distributions made after 12/29/22	Mandatory and automatic ( <i>no plan action required</i> )
Under current law, the special rule for qualified public safety officers applies to public sector firefighters, but not private sector firefighters. SECURE 2.0 extends the exemption from the 10% early withdrawal penalty under the special rule to private sector firefighters.			

### Simplification of Retirement Plan Rules

Overview	Type of Plan Impacted	Effective Date of Change	Mandatory or Optional
<b><u>Recovery of retirement plan overpayments.</u></b>	401(k) 401(a) DC 401(a) DB 403(b)	Effective 12/29/22	Optional, but with certain mandatory participant protections for ERISA plans
Under current law, the IRS provides plan sponsors with guidance on the appropriate correction of inadvertent overpayments from qualified 401(a) plans and 403(b) plans. The IRS guidance (known as "EPCRS") has become more flexible over the years, but it still generally requires the plan sponsor to attempt to secure repayment of overpayments, with applicable interest, and requires notification to the overpayment recipient that the amount of the overpayment was not eligible for rollover treatment. SECURE 2.0 amends ERISA and the Internal Revenue Code to allow a fiduciary the discretion to not seek recovery of inadvertent overpayments from participants and beneficiaries. Significantly, rollovers of overpayments remain valid. For ERISA plans, the amendments also include protections to safeguard retirees who were not at fault for the overpayment, such as prohibiting the collection of interest, limiting the amount by which ongoing benefit payments may be reduced, limiting the number of years for which recoupment can be sought, and prohibiting the recoupment of overpayments from a beneficiary of the participant.			

<p><b><u>Expansion of EPCRS.</u></b></p> <p>SECURE 2.0 expands the IRS correction program known as EPCRS to allow more types of errors to be corrected through a self-correction process and to expand the program to inadvertent IRA failures. Self-correction is extremely helpful for plan sponsors because it allows them to correct inadvertent errors in plan administration without first submitting the proposed correction to the IRS for approval (and paying a related filing fee). Under SECURE 2.0, most inadvertent errors are eligible for self-correction if (i) substantially corrected before the error is identified by the IRS on audit and (ii) corrected within a reasonable period of time after the failure is identified. The IRS is directed to update EPCRS consistently with this provision within two years of enactment of the Act.</p>	<p>401(k) 401(a) DC 401(a) DB 403(b) IRAs</p>	<p>Effective 12/29/22</p>	<p>Optional</p>
<p><b><u>Automatic enrollment correction safe harbor under EPCRS made permanent.</u></b></p> <p>EPCRS currently provides for a safe harbor for correction of failures that relate to automatic enrollment and automatic escalation without paying a penalty, if the error is corrected within 9 ½ months after the end of the plan year in which the failure occurred and certain other conditions are satisfied. The safe harbor expires on December 31, 2023. SECURE 2.0 codifies this safe harbor and makes it permanent.</p>	<p>401(k) 403(b) 457(b) gov.</p>	<p>Effective for failures that occur after 2023</p>	<p>Optional</p>
<p><b><u>Updating the dollar limit for mandatory distributions.</u></b></p> <p>Under current law, a plan sponsor cannot generally force-out distributions to terminated participants if their account balance (or the value of their accrued benefit) exceeds \$5,000. SECURE 2.0 increases the force-out limit to \$7,000. Notwithstanding, distributions exceeding \$1,000 are still required to be rolled over to an IRA if the participant does not consent to receive the distribution in cash. This provision is effective for distributions made after December 31, 2023.</p>	<p>401(k) 401(a) DC 401(a) DB 403(b) 457(b) gov.</p>	<p>Effective for distributions made after 2023</p>	<p>Optional</p>

<p><b><u>Employers can rely on self-certification of hardship.</u></b></p>	<p>401(k) 403(b) 457(b)</p>	<p>Effective for plan years beginning after 12/29/22</p>	<p>Optional</p>
<p>Under current law, an employee is required to substantiate his or her expenses in order to be eligible to receive a distribution on account of financial hardship from a 401(k) plan or 403(b) plan, or to receive a distribution on account of an unforeseeable financial emergency from a 457(b) plan. SECURE 2.0 removes the substantiation requirement and allows a plan administrator to rely on the employee's written self-certification that (i) the circumstances for the hardship exist, (ii) the amount requested is not in excess of the amount required to satisfy the financial need, and (iii) the employee has no alternative reasonably available means to satisfy such need. Reliance on self-certification is not permitted if the plan administrator has actual knowledge that is contrary to the employee's certification. While this provision will reduce the complexity of administering these types of distributions, it also may cause an increase in employees raiding their retirement accounts on the pretense of financial hardship, since the application process will be easier.</p>			
<p><b><u>403(b) hardship withdrawal rules married up to 401(k) rules.</u></b></p>	<p>403(b)</p>	<p>Effective for plan years beginning after 2023</p>	<p>Optional</p>
<p>Historically, hardship distributions were permitted from elective deferrals under 401(k) plans and 403(b) plans, but the related earnings could not be distributed. Recent changes in the law permitted earnings and qualified employer contributions to be included in financial hardship distributions from 401(k) plans, but the old rules continued to apply to 403(b) plans. SECURE 2.0 conforms the 403(b) rules for hardship distributions to the 401(k) rules. Plan sponsors will need to amend their 403(b) plans to allow this change, once effective, since plans are drafted to satisfy the exclusion of earnings under current law.</p>			
<p><b><u>Elimination of "first day of month" requirement for governmental 457(b) plans.</u></b></p>	<p>457(b) gov.</p>	<p>Effective for taxable years beginning</p>	<p>Optional</p>

Under current law, a 457(b) plan participant must enter into a salary reduction agreement to defer compensation to the plan before the beginning of the month to which the agreement will apply. This is a difference from 401(k) plans and 403(b) plans, where a participant may begin contributions as soon as administratively feasible after entering into a salary reduction agreement. SECURE 2.0 aligns the rules for governmental 457(b) plans with those of 401(k) and 403(b) plans, so that contributions can be made effective for any compensation made available to the participant after the salary reduction agreement is filed. Note that participants of tax-exempt 457(b) plans are still subject to the first day of the month requirement. Plan sponsors will need to amend their governmental 457(b) plans to allow this change, since plans are drafted to satisfy the current rule.

after  
12/29/22

**Public safety officer health insurance.**

Up to \$3,000 of distributions from a governmental retirement plan to a public safety officer to pay for health insurance premiums is excluded from gross income, so long as the plan directly pays the insurance company. SECURE 2.0 repeals the direct payment requirement, and allows payments to the employee.

401(k) Effective for Optional  
401(a) DC distributions  
401(a) DB after  
403(b) 12/29/22  
457(b)  
gov.

**Expansion of Roth Contributions**

Overview	Type of Plan Impacted	Effective Date of Change	Mandatory or Optional
<p><b><u>Catch-up contributions are required to be made on a Roth basis for higher income earners.</u></b></p> <p>A 401(k) plan, 403(b) plan, or governmental 457(b) plan may permit participants who are age 50 older during the calendar year to make “catch-up” contributions in excess of the general elective deferral limit (\$7,500 for 2023). Under current law, catch-up contributions are made on either a pre-tax basis or after-tax Roth basis, if</p>	<p>401(k) 403(b) 457(b) gov.</p>	<p>Effective for taxable years beginning after 2023</p>	<p>Mandatory</p>

permitted by the employer. SECURE 2.0 requires catch-up contributions to be made on a Roth basis for all participants whose wages (as defined for Social Security FICA tax purposes) from the employer sponsoring the plan exceed \$145,000 (indexed after 2024) for the preceding calendar year. Participants with wages below \$145,000 for the preceding calendar year must be given the option (but are not required) to make catch-up contributions on a Roth basis.

<b><u>Optional treatment of employer matching or nonelective contributions as Roth.</u></b>	401(k) 403(b) 457(b) gov.	Effective for contributions made after 12/29/22	Optional
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Under current law, matching and nonelective employer contributions that are made to 401(k) plan, 403(b) plan, and governmental 457(b) plan must be made on a pre-tax basis. SECURE 2.0 allows employers to give participants the option of receiving these types of contributions on a Roth basis.

### Action Steps and Amendment Deadlines for Plan Sponsors

The changes outlined above will require all existing plans to make operational changes in order to administer their plans in compliance with mandatory provisions in the law, some of which take effect as early as 2023. In addition, employers and pension systems should carefully consider adopting one or more of the optional provisions to provide employees with new opportunities for savings and flexibility for distributions. This will depend on the needs of each employer's workforce and employee expectations. Once decisions are made, plan sponsors will need to ensure that the plan's service providers and recordkeepers are able to administer the changes by the applicable effective dates. In addition, all plan changes will need to be clearly communicated to participants and plan amendments must be timely adopted.

The general deadline to adopt plan amendments pursuant to the changes required (or optionally permitted by) SECURE 2.0 is the last day of the first plan year beginning on or after January 1, 2025 (**December 31, 2025, for calendar year plans**). For governmental plans, the deadline is the last day of the first plan year beginning on or after January 1, 2027 (**December 31, 2027, for calendar year plans**). However, plans must still operate in accordance with the provisions of SECURE 2.0 as of the applicable effective date.

SECURE 2.0 also conforms the amendment deadline applicable to changes under SECURE 1.0 and the CARES Act, so that all of these deadlines are now, with respect to calendar year plans, December 31, 2025 (December 31, 2027, for governmental plans).

For more information about how SECURE 2.0 might affect your employee benefit plans, please contact Gary Blachman, Audra Ferguson-Allen, Rob Gauss, Lisa Harrison, Lindsay Knowles, Melissa Proffitt, Shalina Schaefer, Kathleen Sheil-

Scheidt, Tara Sciscoe, Chris Sears, or the Ice Miller Workplace Solutions attorney with whom you regularly work.

*This publication is intended for general information purposes only and does not and is not intended to constitute legal advice. The reader should consult with legal counsel to determine how laws or decisions discussed herein apply to the reader's specific circumstances.*

## SECURE 2.0 ACT LEGISLATION INCLUDES SIGNIFICANT CHANGES TO INDIVIDUAL RETIREMENT ACCOUNTS

Date: 31 January 2023

### U.S. Corporate Alert

By: Michael A. Hart, David E. Morse

Late last year, Congress enacted a sweeping set of new retirement savings rules. The SECURE 2.0 Act of 2022 (SECURE 2.0), included as part of the Consolidated Appropriations Act, 2023, builds on the significant retirement savings changes previously enacted by the original SECURE Act of 2019. The changes affect both employer-sponsored retirement savings plans as well as individual retirement accounts (IRAs), including Traditional, Roth, Simplified Employee Pension (SEP) IRAs, and Simple Retirement Accounts (SIMPLE IRAs). While some of the provisions have delayed effective dates, many of the changes are effective immediately.

The IRA-related changes significantly impact IRA administration and documentation for IRA providers, including IRA trustees and custodians. While IRA trust and custodial agreements will not need to be amended to reflect SECURE 2.0 until 31 December 2025, IRAs must be operated in accordance with SECURE 2.0 changes when and as they become effective. In light of the immediate effective date of many of the changes, IRA trustees and custodians need to immediately update a variety of contribution, distribution, and tax reporting and withholding procedures, as well as their IRA disclosure statements.

The following is a brief summary of the most significant IRA-related provisions of SECURE 2.0 that impact IRA providers.

### REQUIRED MINIMUM DISTRIBUTION CHANGES

SECURE 2.0 includes a number of changes that affect IRA-required minimum distributions (RMDs).

#### Increase in RMD Age (Effective in 2023)

The original SECURE Act generally increased the beginning date for RMDs from retirement plans, including IRAs, from age 70½ to age 72. SECURE 2.0 increases the beginning date to age 73 in 2023 and to age 75 in 2033. This change does not apply to individuals who were age 72 or older on 31 December 2022.

#### Reduction in RMD Failure Excise Tax (Effective Immediately)

SECURE 2.0 reduces the excise tax applicable to a failure to timely receive an RMD from an IRA or other retirement account from 50% to 25%. The excise tax is further reduced to 10% if, generally, the failure is corrected by the end of the second taxable year that begins after the end of the taxable year in which the distribution was required to be made. This change became effective on 29 December 2022.

#### Satisfaction of RMD Requirements With Commercial Annuities (Effective in 2022)

SECURE 2.0 includes more flexible rules for using commercial annuities to satisfy RMD requirements by permitting commercial annuity contracts purchased by an IRA or other retirement plan to provide (i) for annual or more frequent payment increases of up to 5% per year, (ii) accelerated lump-sum payments of all or a portion of the remaining payments due (or payments to be received over a following period of 12 months), (iii) payments of dividends and distributions, and (iv) accelerated death distributions for the undistributed portion of the amount paid for the annuity. These changes are effective for calendar years ending after 29 December 2022.

#### **Expansion of QLAC Exemption (Effective Immediately)**

SECURE 2.0 expands the RMD exemption for Qualified Longevity Annuity Contracts (QLACs) by (i) eliminating the requirement that the QLAC premium not exceed 25% of the individual's account or IRA balance, (ii) increasing the QLAC dollar limit from US\$125,000 to US\$200,000 (indexed to the cost of living beginning in 2024), and (iii) permitting the QLAC to include a provision that allows the individual to rescind the contract within 90 days. These changes became effective on 29 December 2022, and the 90-day "free-look" rescission rule is retroactive to 2 July 2014.

#### **Partial Annuity Rules (Effective Immediately)**

SECURE 2.0 allows RMDs for an IRA or other retirement account that has been partially annuitized to be determined under the rules for defined contribution plans rather than the more restrictive defined benefit plan rules. Under the new rule, the value of the annuity contract is treated as part of the account balance and payments from the annuity contract are applied toward the total amount required to be distributed. The overall result should be a reduction in RMDs in most cases. This change became effective on 29 December 2022.

#### **Special Needs Trusts (Effective in 2023)**

The original SECURE Act generally requires that distributions following the death of an IRA owner be completed within 10 years unless the designated beneficiary is an "eligible designated beneficiary." Beneficiaries of certain "special needs" trusts established at least in part for the benefit of a disabled or chronically ill individual can be treated as eligible designated beneficiaries who are exempt from the 10-year limitation if all beneficiaries of the trust otherwise qualify as "designated beneficiaries" for RMD purposes. Charitable organizations do not qualify as "designated beneficiaries." SECURE 2.0 clarifies that a special needs trust that designates a charitable organization as the remainder beneficiary will not disqualify the special needs trust from the rule permitting the beneficiaries of the trust to be treated as eligible designated beneficiaries. This provision is effective for calendar years beginning after 29 December 2022.

### **EXCEPTIONS TO THE 10% EARLY DISTRIBUTION EXCISE TAX**

Generally, taxable distributions from a retirement plan, including an IRA, before age 59½ are subject to a 10% excise tax unless an exception applies. SECURE 2.0 revised and added a number of exceptions to that excise tax.

#### **Qualified Birth and Adoption Expenses (Effective Immediately)**

The SECURE Act of 2019 added an exception to the 10% early distribution excise tax for distributions from retirement plans, including IRAs, made to individuals who have qualified birth and adoption expenses. That exception provided that qualified birth and adoption expense distributions could be repaid to an IRA or other retirement plan. SECURE 2.0 limits the repayment period for qualified birth and adoption expense distributions to

the three-year period beginning on the date of distribution. This limitation is a recognition that it was not generally possible to obtain a refund for taxes on distributions repaid following the lapse of the three-year statute of limitations generally applicable to federal income tax refunds. This change is effective with respect to distributions made after 29 December 2022.

#### **Terminally Ill Individuals (Effective Immediately)**

SECURE 2.0 permits terminally ill individuals to receive penalty-free distributions from retirement accounts, including IRAs. The individual must be certified by a physician as having an illness or physical condition that can reasonably be expected to result in death in 84 months or less. Amounts distributed on the basis of terminal illness may be repaid by the individual to an employer-sponsored retirement plan or IRA within three years after the date of distribution. This provision is effective for distributions made after 29 December 2022.

#### **Federally Declared Disasters (Effective Immediately)**

From time to time, Congress has exempted retirement account distributions, including IRA distributions, from the 10% early distribution excise tax to the extent made in connection with specific federally declared disasters. SECURE 2.0 provides a permanent, generalized exemption for federally declared disasters. The rules are similar to the rules that have applied to specific exemptions provided in the past: (i) the individual's principal place of abode must be located in a federally declared major disaster area and the individual must have sustained economic loss by reason of the disaster, and (ii) the distribution must be made after the first day of the federally declared "incident period" with respect to the disaster and within 180 days after the first day of the incident period or the date of the disaster declaration (whichever is later). The maximum amount that may be distributed under this exception with respect to any disaster is US\$22,000. Any distribution made under this exception may be repaid to an employer-sponsored retirement plan or IRA within three years after the date of the distribution. This provision is retroactively effective with respect to disasters for which the specified incident period begins on or after 26 January 2021.

#### **Repayment Right With Respect to Abandoned First-Time Home Purchases in Qualified Disaster Areas (Effective Immediately)**

Distributions from IRAs for qualified first-time home purchase expenses are generally exempt from the 10% early distribution excise tax. SECURE 2.0 expands that exception by permitting those distributions to be repaid to an employer-sponsored retirement plan or IRA if the distribution was to be used to purchase or construct a principal residence in a federally declared disaster area, but it was not so used. The distribution must have been received during the period beginning 180 days before the first day of the federally declared incident period with respect to the disaster and ending 30 days after the last day of that incident period. The distribution must be repaid during the period beginning on the first day of the federally declared incident period with respect to the disaster and ending 180 days after the later of the first day of the incident period or the date of the disaster declaration. The purpose of this provision is to allow individuals who intended to buy or purchase a first-time principal residence, but who were unable to do so by reason of a federally declared disaster, to return the unused funds to a retirement plan. This provision is effective with respect to disasters for which the specified incident period begins on or after 26 January 2021.

#### **Return of Excess Contributions and Earnings (Effective Immediately)**

SECURE 2.0 exempts corrective distributions of excess contributions and earnings to an IRA from the 10% early distribution excise tax if the distribution is made before the due date of the IRA owner's federal income tax return for the year of the excess contribution (including extensions). This provision is generally effective on 29 December 2022 without regard to when the excess contribution or distribution occurred.

#### **Emergency Personal Expenses (Effective in 2024)**

Under SECURE 2.0, a distribution from a retirement plan, including an IRA, for the purpose of paying emergency personal expenses, up to US\$1,000, is exempt from the 10% excise tax. The individual may repay the distribution to an employer retirement plan or an IRA within three years following the date of the distribution. The exemption is only available with respect to one distribution per year, and if an emergency personal expense distribution is made in a year, no other distribution during the immediately following three-calendar-year period may be treated as an emergency personal expense distribution unless the prior distribution is repaid or the individual's annual retirement plan contributions to all plans and IRAs (e.g., the individual's own elective contributions to 401(k) plans and regular IRA contributions) equal or exceed the amount of the prior emergency personal expense distribution. Emergency personal expenses are expenses due to unforeseeable or immediate financial needs relating to personal or family emergencies. This provision is effective for distributions made after 31 December 2023.

#### **Domestic Abuse Victims (Effective in 2024)**

SECURE 2.0 allows victims of domestic abuse to take penalty free withdrawals from retirement plans, including IRAs, in an amount equal to the lesser of \$10,000 or 50% of the individual's account balance during the one-year period beginning on any date on which the individual is a victim of domestic abuse (which is defined to include not only abuse of the individual IRA owner but also abuse of the individual's child or a member of the individual's household). The distribution is not eligible for rollover and may be repaid to an employer-sponsored retirement plan or an IRA during the three-year period beginning on the date of the distribution. The \$10,000 limit is indexed to the cost of living for calendar years after 2024. This provision is effective for distributions made after December 31, 2023.

### **SEP AND SIMPLE IRAS**

#### **Roth SEP SIMPLE IRA Contributions (Effective in 2023)**

Effective for taxable years beginning after 31 December 2022, employer and employee SEP and SIMPLE IRA contributions may, at the employee's election, be made on a Roth basis.

#### **SEP IRAs for Domestic Employees (Effective in 2023)**

Effective for taxable years beginning after 29 December 2022, an employer may make deductible SEP contributions for domestic employees (e.g., nannies).

#### **Student Loan SIMPLE IRA Matching Contributions (Effective in 2024)**

For purposes of required SIMPLE IRA matching contributions, an employer may elect to treat student loan repayments as if they were employee elective deferral contributions to the SIMPLE IRA. The provision applies to qualified higher education loans, and the employee is required to certify payments on the loan to the employer. This provision does not change any of the limits otherwise applicable to SIMPLE IRA employee or employer matching contributions—the loan repayments are subject to the annual limit on employee SIMPLE IRA elective deferral contributions (US\$15,500 for 2023, plus catch-up contributions) and are subject to the employer SIMPLE

IRA matching contribution requirement. An employer can match student loan repayments under this provision only if it does so for all eligible employees. This provision is effective for contributions for plan years beginning after 31 December 2023.

#### **SIMPLE IRA Nonelective Contributions (Effective in 2024)**

Prior to SECURE 2.0, no employer contributions other than the required nonelective contribution (2% of compensation) or matching contribution (generally, 100% of employee contributions equal to the first 3% of compensation) were permitted. SECURE 2.0 permits the employer to make, in addition to the required nonelective or matching contribution, a voluntary nonelective contribution with respect to each eligible employee who earns at least US\$5,000. The additional nonelective contribution may not exceed 10% of the employee's compensation (up to a maximum contribution of US\$5,000; the \$US5,000 figure is indexed to the cost of living for years beginning after 31 December 2024), and the contribution percentage must be uniform for all eligible employees. This provision is effective for taxable years beginning after 31 December 2023.

#### **Increase in SIMPLE IRA Employee Elective Deferral Contribution Limits (Effective in 2024)**

SECURE 2.0 will increase the limit on annual employee elective deferral contributions to SIMPLE IRAs (currently US\$15,500, plus an additional US\$3,500 catch-up contribution for individuals age 50 or older). For employers with less than 26 employees who received at least US\$5,000 of compensation in the prior year, the contribution limits, including catch-up contributions for employees who are age 50 or older, will be increased by 10% above and beyond any normal cost-of-living increase. The limits will increase for employees of other eligible employers only if they provide a 4% employer matching contribution or a 3% nonelective contribution to all eligible employees. The limits for employees of other employers (i.e., employers who employ more than 25 employees who received at least US\$5,000 of compensation in the prior year and who do not elect to make the higher 4% matching contribution or 3% nonelective contribution) will not change (i.e., they will be eligible only for regular cost-of-living increases). This provision is effective for tax years beginning after 31 December 2023.

#### **Mid-Year Termination of SIMPLE IRA (Effective in 2024)**

Under current law, an eligible employer generally may not terminate a SIMPLE IRA plan mid-year. SECURE 2.0 permits an eligible employer to terminate a SIMPLE IRA plan mid-year if the employer replaces the SIMPLE IRA plan with a SIMPLE 401(k) plan, a safe harbor 401(k) plan, a 401(k) plan with a qualified automatic contribution arrangement, or a "starter" 401(k) plan.<sup>1</sup> (Note that these requirements may prevent the mid-year termination of a SIMPLE IRA plan when it is often most desired—in connection with a merger or acquisition where an employer acquires a target with a SIMPLE IRA plan.) The SIMPLE IRA and replacement 401(k) plan are subject to a combined annual contribution limit for the year of the transition based upon the pro-rated annual limits for each arrangement during the period in which each arrangement was maintained. This provision is effective for plan years beginning after 31 December 2023.

### **TAX CREDITS FOR SMALL EMPLOYERS**

#### **Small Employer Retirement Plan Startup Cost Tax Credit (Effective in 2022)**

SECURE 2.0 expands the annual tax credit available to employers with up to 100 employees for the first three years of a new retirement plan, including a SEP or SIMPLE IRA plan. Under prior law, the credit was generally

limited to 50% of startup costs up to US\$5,000. SECURE 2.0 increases the percentage limitation for employers with no more than 50 employees to 100% of startup costs and provides an additional credit for all eligible employers equal to a percentage of contributions made by the employer up to a maximum of US\$1,000 per employee for the first five years of a new plan. The percentage declines from 100% in the first and second years to 75% in the third year, 50% in the fourth year, and 25% in the fifth year. The additional credit is phased out for employers with more than 50 employees (2% per employee in excess of 50). No contribution credit is allowed with respect to any employee whose compensation for the year of the contribution exceeds US\$100,000 (indexed to the cost of living for years after 2023). The additional credit is available only with respect to contributions to defined contribution plans and is not available with respect to defined benefit plan contributions. This change is effective for tax years beginning after 31 December 2022.

#### **Military Spouse Tax Credit (Effective in 2022)**

SECURE 2.0 implements a new tax credit available to small employers with respect to contributions to defined contribution retirement plans (including SEP and SIMPLE IRAs) for employees who are married to members of the uniformed military services. A tax credit of up to US\$500 is available—US\$200 per military spouse, plus 100% of employer contributions for the benefit of the military spouse up to US\$300 each year for up to three years beginning with the year in which the military spouse first becomes eligible to participate in the plan. The tax credit is available only to employers who have no more than 100 employees who received at least US\$5,000 of compensation from the employer in the prior year, and no credit is available with respect to a military spouse who is a highly compensated employee (generally meaning any 5% owner in the current or prior year or any employee earning more than the compensation limit in the prior year (US\$150,000 for 2023)). In addition, in order to qualify for the credit, the employer's plan must permit military spouses to participate in the plan within two months after their hire date. Military spouses must be entitled to receive contributions equal to the contributions that nonmilitary spouses are entitled to receive after two years of service, and all employer contributions for military spouses must be 100% immediately vested. This provision is effective for tax years beginning after 29 December 2022.

### **OTHER PROVISIONS**

SECURE 2.0 includes a number of other IRA-related provisions.

#### **Statute of Limitations for Excess IRA Contributions and Required Minimum Distribution Failures (Effective Immediately)**

The statute of limitations applicable to the excise tax payable with respect to specified retirement plan failures, including an excess contribution to an IRA or a failure to take a RMD from a retirement plan, including an IRA, has historically commenced only upon filing of a Form 5329, which is the form used to declare and pay such excise taxes. In many cases, where the individual was not aware of the error, this meant that the statute of limitations never lapsed because a Form 5329 was never filed. SECURE 2.0 provides that the statute of limitations period for these errors commences when the individual files his or her Form 1040 federal income tax return for the year the error occurred. It further provides that the statute of limitations is, generally, three years, but six years for the excess IRA contributions excise tax. These changes became effective immediately on 29 December 2022.

#### **Default IRA Transfers (Effective in 2023)**

SECURE 2.0 establishes a new exemption from the prohibited transaction rules under the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 that would permit an IRA provider to receive

compensation in connection with the transfer amounts from a default IRA established by the IRA provider pursuant to an automatic rollover from an employer-sponsored retirement plan to a retirement plan sponsored by a successor employer of the individual for whom the default IRA was established. The exemption requires IRA providers who wish to utilize the exemption to conduct monthly searches for retirement plans sponsored by successor employers of individuals for whom the IRA provider maintains default IRAs and to transfer the default IRA to the successor employer's retirement plan unless the IRA owner affirmatively opts out following advance notice. The exemption is conditioned upon (i) the IRA provider's acknowledgment of fiduciary status with respect to the default IRA, (ii) reasonable fees and compensation, (iii) disclosure of such fees and compensation to an independent fiduciary of the successor retirement plan, (iv) offering default IRA transfer services to all successor employer retirement plans on the same terms and conditions, (v) pre- and post-transaction notices to the individual owner of the default IRA, and (vi) the IRA provider not exercising discretion over the amount or timing of default IRA transfers. The exemption includes a six-year record retention requirement and annual audit requirement and obligates the IRA provider to maintain a website that lists the record-keepers for each successor employer retirement plan with respect to which the IRA provider carries out automatic portability transactions. The exemption is available with respect to default IRA transfers to successor employer retirement plans occurring on or after 29 December 2023.

#### **Expansion of Tax-Free IRA Charitable Distribution Rule (Effective in 2023)**

SECURE 2.0 permits a one-time tax-free charitable distribution of up to US\$50,000 to charitable remainder annuity trusts, charitable remainder unitrusts, and charitable gift annuities. This is in addition to the preexisting rule that permits tax-free charitable distributions of up to a lifetime maximum of US\$100,000. This new provision is effective for tax years beginning after 29 December 2022. In addition, the US\$50,000 and US\$100,000 limits are indexed to inflation for tax years beginning after 2023. (The US\$100,000 limitation was not previously indexed.)

#### **Indexing Catch-Up Contributions (Effective in 2024)**

Historically, annual IRA catch-up contributions for individuals age 50 or older have been limited to US\$1,000, and, unlike catch-up contributions to qualified retirement plans, that limit has not been indexed to the cost of living. The US\$1,000 IRA annual catch-up contribution limit will be indexed to the cost of living for tax years beginning after 31 December 2023.

#### **529 Plan Account Transfers to Roth IRAs (Effective in 2024)**

SECURE 2.0 permits direct transfers from 529 plan accounts to a Roth IRA established for the beneficiary of the 529 plan account. The 529 plan account must have been established at least 15 years prior to the date of the rollover. The transfer is subject to a US\$35,000 lifetime maximum and an annual maximum rollover equal to the annual Roth IRA contribution limit reduced by contributions actually made to the Roth IRA. The transfer may not exceed the aggregate amount of contributions and earnings to the 529 plan prior to the five-year period ending on the date of the transfer. This provision is effective for transfers after 31 December 2023.

#### **Expansion of Retirement Plan Correction Programs to IRAs (Effective before 2025)**

SECURE 2.0 directs the Internal Revenue Service to expand its retirement plan correction program—known as the Employee Plans Compliance Resolution System (EPCRS)—to IRAs by 29 December 2024. For many years, the EPCRS program has allowed employers that sponsor tax-favored retirement plans to correct failures to administer those plans in a manner consistent with the Internal Revenue Code with reduced or no penalty cost. This expansion of the EPCRS program will allow IRA owners to take advantage of similar rules for eligible

inadvertent compliance failures, for example, by providing for waivers of the RMD excise tax and correcting nonspouse-inherited IRA rollovers due to IRA provider inadvertent error.

### **Saver's Credit Replaced by Contribution to IRA/Plan (Effective in 2027)**

SECURE 2.0 replaces the former "saver's tax credit" with a federal contribution to the taxpayer's IRA or retirement plan. The saver's tax credit allowed a low-income taxpayer to take an annual tax credit of up to US\$1,000 of annual retirement plan (including IRA) contributions. The credit was phased out based upon adjusted gross income up to US\$36,500 (US\$73,000 for married filing jointly) for 2023. Under SECURE 2.0, the tax credit is replaced with a contribution by the federal government to the taxpayer's Traditional IRA or other non-Roth retirement plan in an amount equal to 50% of the taxpayer's annual retirement plan contributions, up to a maximum of US\$2,000 per individual. The matching contribution phases out based upon adjusted gross income between US\$20,500 to US\$35,500 (US\$41,000 to US\$71,000 for married filing jointly, and US\$30,750 to US\$53,250 for head of household). These limits are indexed to the cost of living for years after 2027. The contribution is reduced by the amount of regular retirement plan distributions received by the individual (or the individual's spouse if married and filing jointly) during the three-year period ending in the year of the contribution. The contribution is not subject to limitations on the amount of annual contributions, including, if made to an IRA, the IRA annual contribution limit (US\$6,500 for 2023, plus catch-up contributions). The matching contribution is not generally available to any taxpayer under age 18 or who is a tax dependent of another person, a full-time student, or a nonresident alien. This change is effective for years beginning after 31 December 2026.

## **FOOTNOTES**

<sup>1</sup> A "starter" 401(k) plan is a new type of 401(k) plan enacted as part of SECURE 2.0 under which an employer that does not otherwise sponsor a tax-qualified retirement plan may adopt a deferral-only 401(k) plan with automatic enrollment and lower contribution limits. A starter 401(k) plan is exempt from annual employee contribution nondiscrimination testing.

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