

SECURE 2.0 ACT OF 2022

Index

Title I – Expanding Coverage and Increasing Retirement Savings	
Section 101 – Mandating automatic enrollment for new plans.	1
Section 102 – Modification of startup credit for small employers.	1
Section 103 – Saver’s Match.	1
Section 104 – Promotion of Saver’s Match.	2
Section 105 – Pooled employer plan modification.	2
Section 106 – Multiple employer 403(b) plans.	2
Section 107 – Increase in age for Required Minimum Distributions.	2
Section 108 – Indexing IRA catch-up limit.	2
Section 109 – Higher catch-up limit to apply at ages 60, 61, 62, and 63.	2
Section 110 – Treatment of student loan payments as elective deferrals for purposes of matching contributions.	3
Section 111 – Small employer startup credit for joining existing plan.	3
Section 113 – Small financial incentives for employees contributing to a plan.	3
Section 115 – Withdrawals for certain emergency expenses.	4
Section 116 – Allows additional nonelective contributions to SIMPLE plans.	4
Section 117 – Contribution limit for SIMPLE plans.	4
Section 118 – Tax treatment of certain nontrade or business SEP contributions.	4
Section 120 – Exemption for certain automatic portability transactions.	5
Section 121 – Starter 401(k) plans for employers with no retirement plan.	5
Section 125 – Expanding coverage for part-time workers.	5
Section 127 – Emergency savings accounts linked to individual account plans.	6

SECURE 2.0 ACT OF 2022

Title II – Preservation of Income	
Section 201 – Remove required minimum distribution barriers of life annuities.	6
Section 204 – Eliminating a penalty on partial annuitization.	7
Title III – Simplification and Clarification of Retirement Plan Rules	
Section 301 – Recovery of retirement plan overpayments.	7
Section 302 – Reduction in excise tax on certain accumulations in qualified retirement plans.	7
Section 303 – Retirement savings lost and found.	7
Section 304 – Updating dollar limit for mandatory distributions.	8
Section 305 – Expansion of Employee Plans Compliance Resolution System.	8
Section 306 – Eliminate the “first day of the month” requirement for governmental section 457(b) plans.	8
Section 308 – Distributions to firefighters.	8
Section 310 – Application of top-heavy rules to defined contribution plans covering excludable employees.	9
Section 311 – Repayment of qualified birth or adoption distributions limited to 3 years.	9
Section 312 – Employer may rely on employee certifying that deemed hardship distribution conditions are met.	9
Section 314 – Penalty-free withdrawal from retirement plans for individual case of domestic abuse.	10
Section 320 – Eliminating unnecessary plan requirements related to unenrolled participants.	10
Section 322 – Tax treatment of IRA involved in a prohibited transaction.	10
Section 325 – Roth plan distribution rules.	11
Section 326 – Exception to penalty on early distributions from qualified plans for individuals with a terminal illness.	11

SECURE 2.0 ACT OF 2022

Section 327 – Surviving spouse election to be treated as employee.	11
Section 328 – Repeal of direct payment requirement on exclusion from gross income of distributions from governmental plans for health and long-term care insurance.	11
Section 329 – Modification of eligible age for exemption from early withdrawal penalty.	12
Section 330 – Exemption from early withdrawal penalty for certain state and local government corrections employees.	12
Section 331 – Special rules for use of retirement funds in connection with qualified federally declared disasters.	12
Section 332 – Employers allowed to replace SIMPLE retirement accounts with safe harbor 401(k) plans during a year.	13
Section 334 – Long-term care contracts purchased with retirement plan distributions.	13
Section 335 – Corrections of mortality tables.	13
Section 338 – Requirement to provide paper statements in certain cases.	13
Section 341 – Consolidation of defined contribution plan notices.	14
Section 342 – Information needed for financial options risk mitigation act.	14
Section 343 – Defined benefit annual funding notices.	14
Section 345 – Annual audits for group of plans.	14
Section 350 – Safe harbor for corrections of employee elective deferral failures.	15
Title VI – Revenue Provisions	
Section 602 – Hardship withdrawal rules for 403(b) plans.	15
Section 603 – Elective deferrals generally limited to regular contribution limit.	15
Section 604 – Optional treatment of employer matching or nonelective contributions as Roth contributions.	15
Section 606 – Enhancing retiree health benefits in pension plans.	16

SECURE 2.0 ACT OF 2022

An Overview of Select Provisions

Title I – Expanding Coverage and Increasing Retirement Savings

Section 101 – Mandating automatic enrollment for new plans.

- Section 101 requires 401(k) and 403(b) plans established after the date of enactment to automatically enroll employees in the respective plans when they become eligible (and allows employees to opt out of coverage).
- The initial automatic enrollment amount must be at least 3% but not more than 10%. Each year thereafter that amount is increased by 1% until it reaches at least 10% but not more than 15%.
- This provision does not apply to: 1) 401(k) and 403(b) plans established before the date of enactment; 2) businesses with 10 or fewer employees; 3) businesses that have been in business for less than 3 years; 4) church plans; and 5) governmental plans.
- This requirement would apply to an employer adopting a multiple employer plan (MEP) after the date of enactment, even though the MEP itself was established prior to enactment.
- Section 101 is effective for plan years beginning after December 31, 2024.

Section 102 – Modification of startup credit for small employers.

- This provision increases the 3-year small business startup credit from 50% to 100% of administrative costs up to an annual cap of \$5,000.
- Except in the case of defined benefit plans, an additional credit is provided for employer contributions. The amount of the additional credit generally will be a percentage of the amount contributed by the employer on behalf of employees up to a per-employee cap of \$1,000.
- The full credit for employer contributions is limited to employers with 50 or fewer employees and phased out for employers with between 51 and 100 employees.
- Section 102 is effective for taxable years beginning after December 31, 2022.

Section 103 – Saver’s Match.

- Section 103 repeals and replaces the credit with respect to IRA and retirement plan contributions, changing it from a credit paid in cash as part of a tax refund into a federal matching contribution that must be deposited into a taxpayer’s IRA or retirement plan. The match is 50% of IRA or retirement plan contributions up to \$2,000 per individual, with a maximum match of \$1,000 and a minimum match of \$100. The match phases out between \$41,000 and \$71,000 in the case of taxpayers filing a joint return (\$20,500 to \$35,500 for single taxpayers and those married filing separate returns; \$30,750 to \$53,250 for head of household filers).
- Section 103 is effective for taxable years beginning after December 31, 2026.

SECURE 2.0 ACT OF 2022

Section 104 – Promotion of Saver’s Match.

- Section 104 directs the Treasury Department to increase public awareness of the Saver’s Match to increase use of the match by low- and moderate-income taxpayers. The promotion will make clear that the Saver’s Match cannot be withdrawn without potentially incurring penalties.
- The Treasury Secretary must report to Congress on the Treasury Department’s anticipated promotion efforts no later than July 1, 2026.

Section 105 – Pooled employer plan modification.

- Section 105 clarifies that a pooled employer plan (PEP) may designate a named fiduciary (other than an employer in the plan) to collect contributions to the plan.
- Such fiduciary would be required to implement written contribution collection procedures that are reasonable, diligent, and systematic.
- Section 105 is effective for plan years beginning after December 31, 2022.

Section 106 – Multiple employer 403(b) plans.

- Section 106 allows 403(b) plans to participate in MEPs and PEPs, including relief from the one bad apple rule so that the violations of one employer do not affect the tax treatment of employees of compliant employers.
- Section 106 is effective for plan years beginning after December 31, 2022.

Section 107 – Increase in age for required minimum distributions (RMDs).

- Section 107 increases the required minimum distribution age from 72 (SECURE Act of 2019) to 73 starting on January 1, 2023.
- On January 1, 2033, the RMD age is further raised to 75.

Section 108 – Indexing IRA catch-up limit.

- Section 108 provides for the indexing of the limit on IRA catch-up contributions (\$1,000).
- Section 108 indexes such limit and is effective for taxable years beginning after December 31, 2023.

Section 109 – Higher catch-up limit to apply at ages 60, 61, 62, and 63.

- Under current law, employees who have attained age 50 are permitted to make catch-up contributions under a retirement plan in excess of otherwise applicable limits. The limit on catch-up contributions for 2023 is \$7,500, except in the case of SIMPLE plans, for which the limit is \$3,500.
- Section 109 increases these limits to the greater of \$10,000 (\$5,000 for SIMPLE plans) or 50% more than the regular catch-up amount in 2025 for individuals who have attained ages 60, 61, 62, and 63.
- The increased amounts are indexed for inflation after 2025.
- Section 109 is effective for taxable years beginning after December 31, 2024.

SECURE 2.0 ACT OF 2022

Section 110 – Treatment of student loan payments as elective deferrals for purposes of matching contributions.

- Section 110 permits an employer to make matching contributions under a 401(k) plan, 403(b) plan, or SIMPLE IRA with respect to “qualified student loan payments.”
- A qualified student loan payment is broadly defined as any indebtedness incurred by the employee solely to pay qualified higher education expenses of the employee.
- Student loan matching contributions must be:
 - Available to all participants eligible to receive matching contributions on elective deferrals.
 - Matched at the same rate as matching contributions on elective deferrals.
 - Subject to the same vesting schedule as matching contributions on elective deferrals.
- Governmental employers are also permitted to make matching contributions in a section 457(b) plan or another plan with respect to such repayments.
- Section 110 is effective for contributions made for plan years beginning after December 31, 2023.

Section 111 – Small employer startup credit for joining existing plan.

- Section 111 ensures the startup tax credit is available for 3 years for employers joining an MEP/PEP, regardless of how long the MEP/PEP has existed.
- Section 111 is effective retroactively for taxable years beginning after December 31, 2019.

Section 113 – Small financial incentives for employees contributing to a plan.

- Under current law, immediate financial incentives (like gift cards in small amounts) to encourage contribution to a plan are prohibited.
- Section 113 permits employers to offer de minimis financial incentives, not paid for with plan assets, such as low-dollar gift cards, to boost employee participation in workplace retirement plans by exempting de minimis financial incentives from section 401(k)(4)(A) and from the corresponding rule under section 403(b).
- Section 113 is effective for plan years beginning after the date of enactment of this Act.

SECURE 2.0 ACT OF 2022

Section 115 – Withdrawals for certain emergency expenses.

- Section 115 provides an exception from the 10% tax penalty for premature distributions if the distribution is used for certain emergency expenses that are unforeseeable or for immediate financial needs relating to personal or family emergency expenses.
- Only one distribution is permissible per year of up to \$1,000, and a taxpayer has the option to repay the distribution within 3 years.
- No further emergency distributions are permissible during the 3-year repayment period unless repayment occurs or the participant makes elective contributions at least equal to the amount of the distribution.
- Section 115 is effective for distributions made after December 31, 2023.

Section 116 – Allows additional nonelective contributions to SIMPLE plans.

- Current law requires employers with SIMPLE plans to make employer contributions to employees of either 2% of compensation or 3% of employee elective deferral contributions.
- Section 116 permits an employer to make additional contributions to each employee of the plan in a uniform manner provided that the contribution may not exceed the lesser of up to 10% of compensation or \$5,000 (indexed).
- Section 116 is effective for taxable years beginning after December 31, 2023.

Section 117 – Contribution limit for SIMPLE plans.

- Under current law, the annual contribution limit for employee elective deferral contributions to a SIMPLE IRA plan is \$14,000 (2022), and the catch-up contribution limit beginning at age 50 is \$3,000.
- Section 117 increases the annual deferral limit and the catch-up contribution at age 50 by 10%, as compared to the limit that would otherwise apply in the first year this change is effective, in the case of an employer with no more than 25 employees.
- An employer with 26 to 100 employees would be permitted to provide higher deferral limits, but only if the employer either provides a 4% matching contribution or a 3% employer contribution.
- Section 117 makes similar changes to the contribution limits for SIMPLE 401(k) plans.
- Section 117 is effective for taxable years beginning after December 31, 2023.

Section 118 – Tax treatment of certain nontrade or business SEP contributions.

- Section 118 permits employers of domestic employees (e.g., nannies) to provide retirement benefits for such employees under a Simplified Employee Pension (SEP).
- Section 118 is effective for taxable years beginning after date of enactment of this Act.

SECURE 2.0 ACT OF 2022

Section 120 – Exemption for certain automatic portability transactions.

- Under current law, an employer is permitted to distribute a participant’s account balance without participant consent if the balance is under \$5,000 and the balance is immediately distributable (e.g., after a termination of employment).
- Current law also requires an employer to roll over this distribution into a default IRA if the account balance is at least \$1,000 and the participant does not affirmatively elect otherwise.
- Section 120 permits a retirement plan service provider to provide employer plans with automatic portability services. Such services involve the automatic transfer of a participant’s default IRA (established in connection with a distribution from a former employer’s plan) into the participant’s new employer’s retirement plan, unless the participant affirmatively elects otherwise.
- Section 120 is effective for transactions occurring on or after the date that is 12 months after the date of enactment of this Act.

Section 121 – Starter 401(k) plans for employers with no retirement plan.

- Section 121 permits an employer that does not sponsor a retirement plan to offer a starter 401(k) plan (or safe harbor 403(b) plan). A starter 401(k) plan (or safe harbor 403(b) plan) would generally require that all employees be default enrolled in the plan at a 3% to 15% of compensation deferral rate.
- The limit on annual deferrals would be the same as the IRA contribution limit, which for 2022 is \$6,000 with an additional \$1,000 in catch-up contributions beginning at age 50.
- Section 121 is effective for plan years beginning after December 31, 2023.

Section 125 – Expanding coverage for part-time workers.

- The SECURE Act of 2019 first addressed this issue by requiring that — except in the case of collectively bargained plans — a 401(k) plan is required to extend eligibility to an employee that completes either 1 year of service (with the 1,000-hour rule) or 3 consecutive years of service (where the employee completes at least 500 hours of service).
- Section 125 reduces the 3-year rule to 2 years and extends applicability of this coverage requirement to 403(b) plans that are subject to ERISA.
- Section 125 also provides that pre-2021 service is disregarded for vesting purposes, just as such service is disregarded for eligibility purposes under current law, effective as if included in the SECURE Act to which the amendment relates.
- This provision is effective for plan years beginning after December 31, 2024.

SECURE 2.0 ACT OF 2022

Section 127 – Emergency savings accounts linked to individual account plans.

- Section 127 permits employers to offer their non-highly compensated employees an opportunity to save through a pension-linked emergency savings account.
- Employee contributions to the emergency savings account are capped at \$2,500 (or a lower amount set by the employer). Once the cap is reached, the additional contributions can be directed to the employee's Roth defined contribution plan (if they have one) or, if the plan does not have a Roth source, stopped until the balance attributable to contributions falls below the cap.
- Contributions to the emergency savings account are made on a Roth-like basis and treated as elective deferrals for purposes of retirement matching contributions, with an annual matching cap set at the maximum account balance (i.e., \$2,500 or lower) as set by the plan sponsor.
- Distributions from an emergency savings account are deemed to be a qualified Roth distribution and are not taxable.
- At separation from service, employees may take their emergency savings accounts as cash or roll their savings into their Roth defined contribution plan (if they have one) or into an IRA.
- Employers are permitted to automatically enroll employees into such an account at no more than 3% of their salary, with contributions invested in a manner consistent with the Department of Labor's QDIA regulations.
- Section 127 will apply to plan years beginning after December 31, 2023.

Title II – Preservation of Income

Section 201 – Remove required minimum distribution barriers of life annuities.

- Eliminates barriers for life annuities under plans and IRAs by providing relief from the actuarial test for RMD rules (minimum income threshold test, aka MITT), which limited availability of certain annuity features (increasing annuity amounts) offered under qualified plans and IRAs.
- Updates the actuarial test and exempts certain types of benefits, such as annual increases of up to 5%, commutations, accelerations of up to 12 months of payments, and lump-sum payments on death.
- Section 201 is effective for calendar years ending after the date of enactment of this Act.

SECURE 2.0 ACT OF 2022

Section 204 – Eliminating a penalty on partial annuitization.

- If a tax-preferred retirement account also holds an annuity, current law requires that the account be bifurcated between the portion of the account holding the annuity and the rest of the account for purposes of applying required minimum distribution rules. This treatment can result in higher minimum distributions than would be required if the account did not hold an annuity.
- Section 204 permits the account owner to elect to aggregate distributions from both portions of the account for purposes of determining minimum distributions.
- This provision is effective on the date of enactment of this Act. The Treasury Secretary is to update the relevant regulations accordingly.

Title III – Simplification and Clarification of Retirement Plan Rules

Section 301 – Recovery of retirement plan overpayments.

- Section 301 provides retirement plan fiduciaries the latitude to decide not to recoup overpayments that were mistakenly made as long as certain conditions are met.
- If plan fiduciaries choose to recoup overpayments, limitations and protections apply to safeguard innocent retirees.
- Section 301 is effective on the date of enactment of this Act. The provision further outlines how plan fiduciaries may proceed with respect to determinations made prior to the date of enactment to seek or not to seek recovery of overpayments.

Section 302 – Reduction in excise tax on certain accumulations in qualified retirement plans.

- Section 302 reduces the penalty for failures to take required minimum distributions from 50% to 25%.
- Further, if a failure to take a required minimum distribution from an IRA is corrected in a timely manner, as defined under the Act, the excise tax on the failure is further reduced from 25% to 10%.
- Section 302 is effective for taxable years beginning after the date of enactment of this Act.

Section 303 – Retirement savings lost and found.

- Section 303 directs the Department of Labor (DOL) to create a national online searchable lost-and-found database for Americans' retirement plans at the Department of Labor.
- The database will collect information regarding benefits owed to missing, lost, or non-responsive participants and beneficiaries in tax-qualified retirement plans and enable retirement participants and beneficiaries, who might have lost track of their pension or 401(k) plan, to search for the contact information of their plan administrator.
- Section 303 directs the creation of the database no later than 2 years after the date of enactment of this Act.

SECURE 2.0 ACT OF 2022

Section 304 – Updating dollar limit for mandatory distributions.

- Under current law, employers may transfer former employees’ retirement accounts from a workplace retirement plan into an IRA if their balances are between \$1,000 and \$5,000.
- Section 307 increases the limit from \$5,000 to \$7,000.
- This provision is effective for distributions made after December 31, 2023.

Section 305 – Expansion of Employee Plans Compliance Resolution System.

- Section 305 expands the Employee Plans Compliance Resolution System (EPCRS) to (1) allow more types of errors to be corrected through self-correction and (2) apply to inadvertent IRA errors.
- For example, Section 305 allows for correction of many plan loan errors through self-correction. Plan loans are a frequent area of error and in the past would have required correction through the Internal Revenue Service.
- Section 305 is effective on the date of enactment of this Act.
- The Act directs that any guidance or revision of guidance required by Section 305 shall be promulgated no later than 2 years after the date of enactment of this Act and that Revenue Procedure 2021-30 (or any successor guidance) shall be updated to take into account the provisions of this section no later than 2 years after the date of enactment of this Act.

Section 306 – Eliminate the “first day of the month” requirement for governmental section 457(b) plans.

- Under current law, participants in a governmental 457(b) plan must request changes in their deferral rate prior to the beginning of the month in which the deferral will be made. This rule does not exist for other defined contribution plans.
- Section 306 allows such elections to be made at any time prior to the date that the compensation being deferred is available.
- Section 306 is effective for taxable years beginning after the date of enactment of this Act.

Section 308 – Distributions to firefighters.

- Under current law, if an employee terminates employment after age 55 and takes a distribution from a retirement plan, the 10% early distribution tax does not apply. However, there is a special rule for “qualified public safety employees” in governmental plans, under which age 50 is substituted for age 55 for purposes of this exception from the 10% tax. This exemption applies to public sector firefighters but not private sector firefighters.
- Section 308 extends the age 50 rule to private sector firefighters, who merit the same treatment for distributions.
- Section 308 is effective for distributions made after the date of enactment of this Act.

SECURE 2.0 ACT OF 2022

Section 310 – Application of top-heavy rules to defined contribution plans covering excludable employees.

- Under current law, qualified retirement plans must pass the top-heavy test in addition to other nondiscrimination tests. Plans that are deemed top heavy are required to provide employees with a minimum of a 3%-of-pay nonelective contribution, which is a significant cost to small businesses.
- Other nondiscrimination tests that apply to 401(k) plans allow an employer to test otherwise excludable employees (e.g., those who are under age 21 and have less than 1 year of service) separately. However, this separate testing is not allowed for the top-heavy test.
- Section 310 allows an employer to perform the top-heavy test separately on the non-excludable and excludable employees. This removes the financial incentive to exclude employees from the 401(k) plan and increases retirement plan coverage to more workers.
- Section 310 is effective for plan years beginning after December 31, 2023.

Section 311 – Repayment of qualified birth or adoption distributions limited to 3 years.

- The SECURE Act included a provision that allows individuals to receive distributions from their retirement plan in the case of birth or adoption without paying the 10% additional tax under Code section 72(t) (known as a qualified birth or adoption distribution, or QBAD). The distributions can be recontributed to a retirement plan at any time and are treated as rollovers.
- Section 311 amends the QBAD provision to restrict the recontribution period to 3 years.
- Section 311 is effective to distributions made after the date of the enactment of this Act. QBADs paid prior to the date of enactment must be repaid no later than January 1, 2026.

Section 312 – Employer may rely on employee certifying that deemed hardship distribution conditions are met.

- Section 312 provides that, under certain circumstances, employees are permitted to self-certify that they have had an event that constitutes a hardship for purposes of taking a hardship withdrawal.
- Applies to 401(k) and 403(b) plan hardships and 457 plan unforeseeable emergencies.
- Section 312 is effective for plan years beginning after the date of enactment of this Act.

SECURE 2.0 ACT OF 2022

Section 314 – Penalty-free withdrawal from retirement plans for individual case of domestic abuse.

- Section 314 allows retirement plans to permit participants that self-certify that they experienced domestic abuse to withdraw a small amount of money (the lesser of \$10,000, indexed for inflation, or 50% of the participant's account).
- A distribution made under Section 314 is not subject to the 10% tax on early distributions.
- Plan sponsors may rely on participant certification that they are eligible for the distribution.
- Participants have the opportunity to repay the withdrawn money from the retirement plan over 3 years and will be refunded for income taxes for money that is repaid.
- Section 314 is effective for distributions made after December 31, 2023.

Section 320 – Eliminating unnecessary plan requirements related to unenrolled participants.

- Section 320 provides that employers are no longer required to provide certain intermittent ERISA or Code notices to unenrolled participants who have not elected to participate in a workplace retirement plan.
- However, to further encourage participation of unenrolled participants, the plan is required to send (1) an annual reminder notice of the participant's eligibility to participate in the plan and any applicable election deadlines, and (2) any otherwise required document requested at any time by the participant.
- This rule applies only with respect to an unenrolled participant who received the summary plan description, in connection with initial eligibility under the plan, and any other notices related to eligibility under the plan required to be furnished.
- Section 320 is effective for plan years beginning after December 31, 2022.

Section 322 – Tax treatment of IRA involved in a prohibited transaction.

- When an individual engages in a prohibited transaction with respect to their IRA, the IRA is disqualified and treated as distributed to the individual, irrespective of the size of the prohibited transaction.
- Section 322 clarifies that if an individual has multiple IRAs, only the IRA with respect to which the prohibited transaction occurred will be disqualified.
- Section 322 is effective for taxable years beginning after the date of enactment of this Act.

SECURE 2.0 ACT OF 2022

Section 325 – Roth plan distribution rules.

- Under current law, required minimum distributions are not required to begin prior to the death of the owner of a Roth IRA. However, pre-death required minimum distributions are required in the case of the owner of a Roth designated account in an employer retirement plan (e.g., 401(k) plan).
- Section 325 eliminates the pre-death required minimum distribution requirement for Roth accounts in employer plans.
- Section 325 is effective for taxable years beginning after December 31, 2023. Section 325 does not apply to distributions that are required with respect to years beginning before January 1, 2024, but are permitted to be paid on or after such date.

Section 326 – Exception to penalty on early distributions from qualified plans for individuals with a terminal illness.

- Under current law, an additional 10% tax applies to early distributions (before age 59½) from tax-preferred retirement accounts.
- Section 326 provides an exception to the 10% premature withdrawal penalty in the case of a distribution to a terminally ill individual, and self-certification is not allowed.
- This section is effective for distributions made after the date of enactment of this Act.

Section 327 – Surviving spouse election to be treated as employee.

- Section 327 permits a surviving spouse to elect to be treated as the deceased employee for purposes of required minimum distribution rules.
- Section 327 is effective for calendar years beginning after December 31, 2023.

Section 328 – Repeal of direct payment requirement on exclusion from gross income of distributions from governmental plans for health and long-term care insurance.

- Current law provides an exclusion from gross income (\$3,000) for a distribution from a governmental retirement plan to a public safety officer to pay for their health insurance premiums. The exclusion requires that the plan directly pay the insurance premiums.
- Section 328 repeals the direct payment requirement.
- This section is effective for distributions made after the date of enactment of this Act.

SECURE 2.0 ACT OF 2022

Section 329 – Modification of eligible age for exemption from early withdrawal penalty.

- The 10% additional tax on early distributions from tax-preferred retirement savings plans does not apply to a distribution from a governmental plan to a public safety officer who is at least age 50.
- Section 329 extends the exception to public safety officers with at least 25 years of service with the employer sponsoring the plan.
- This section is effective for distributions made after the date of enactment of this Act.

Section 330 – Exemption from early withdrawal penalty for certain state and local government corrections employees.

- Section 330 extends the public safety officer exception to the 10% early distribution tax to corrections officers who are employees of state and local governments.
- This section is effective for distributions made after the date of enactment of this Act.

Section 331 – Special rules for use of retirement funds in connection with qualified federally declared disasters.

- Section 331 provides permanent rules relating to the use of retirement funds in the case of a federally declared disaster.
- The permanent rules allow up to \$22,000 to be distributed from employer retirement plans or IRAs for affected individuals.
- Affected individuals must live in a federally declared disaster area and have sustained an economic loss on account of the disaster.
- The distribution must be taken between the start of the disaster incident period up to 180 days following the end of that period.
- Such distributions are not subject to the 10% IRS excise tax and are taken into account as gross income ratably over 3 years. Distributions can be repaid to a tax-preferred retirement account within 3 years.
- Amounts distributed prior to the disaster to purchase a home can be recontributed.
- In addition, an employer is permitted to provide for a larger amount to be borrowed from a plan by affected individuals (up to the lesser of \$100,000 or 100% of the vested account balance) and for additional time (up to 1 year) for repayment of plan loans owed by affected individuals.
- Section 331 is effective for disasters occurring on or after January 26, 2021.

SECURE 2.0 ACT OF 2022

Section 332 – Employers allowed to replace SIMPLE retirement accounts with safe harbor 401(k) plans during a year.

- Section 332 permits an employer to replace a SIMPLE IRA plan with a SIMPLE 401(k) plan or other 401(k) plan that requires mandatory employer contributions during a plan year.
- This section is effective for plan years beginning after December 31, 2023.

Section 334 – Long-term care contracts purchased with retirement plan distributions.

- Section 334 permits retirement plans to make distributions for the payment of premiums for certain specified long-term care insurance contracts. Such distributions are limited to the lowest of (i) the amount paid or assessed to the participant during the year for long-term care insurance; (ii) 10% of the vested balance of the account; or (iii) \$2,500 per year (which is indexed starting in 2025). Distributions from plans to pay such premiums are exempt from the additional 10% tax on early distributions.
- Only a policy that provides for high-quality, long-term coverage is eligible for early distribution and waiver of the 10% tax.
- Section 334 is effective 3 years after date of enactment of this Act.

Section 335 – Corrections of mortality tables.

- Section 335 generally requires that for purposes of the minimum funding rules, a pension plan is not required to assume beyond the plan's valuation date future mortality improvements at any age greater than 0.78%.
- The Secretary of the Treasury is directed to amend all relevant regulations on the matter within 18 months, though this section is deemed to take effect on the date of enactment.

Section 338 – Requirement to provide paper statements in certain cases.

- Section 338 amends ERISA to generally provide that, with respect to defined contribution plans, unless a participant elects otherwise, the plan is required to provide a paper benefit statement at least once annually.
- For defined benefit plans, unless a participant elects otherwise, the statement that must be provided once every 3 years under ERISA must be a paper statement.
- For plans relying on the 2002 electronic delivery safe harbors, an initial notice requirement is added for any participant who becomes eligible on or after January 1, 2026.
- The DOL is directed to update the relevant sections of its regulations and corresponding guidance by December 31, 2024.
- The annual paper statement requirement is effective for plan years beginning after December 31, 2025.

SECURE 2.0 ACT OF 2022

Section 341 – Consolidation of defined contribution plan notices.

- Section 341 directs the Treasury and DOL Secretaries within 2 years to amend regulations to permit a plan to consolidate certain required plan notices.

Section 342 – Information needed for financial options risk mitigation act.

- In the case of a plan that is amended to afford a participant or beneficiary the opportunity to elect to receive a lump-sum distribution, Section 342 requires pension plan administrators to provide plan participants and beneficiaries with information critical to comparing the monthly benefits offered under the plan and a lump-sum distribution, including information relating to how the lump sum was calculated; the ramifications of accepting a lump sum, such as the loss of certain federal protections; details about the election period; where to follow up with questions; and other information.
- The DOL is directed to issue regulations implementing this provision not earlier than 1 year after enactment.
- This requirement applies as of the applicable effective date of final regulation but not later than 1 year after issuance of a final rule.

Section 343 – Defined benefit annual funding notices.

- Section 343 aims to identify defined benefit pension plan funding issues more clearly on a plan's annual funding notice.
- Section 343 is effective for plan years beginning after December 31, 2023.

Section 345 – Annual audits for group of plans.

- Under current law, generally, a Form 5500 for a defined contribution plan must contain an opinion from an independent qualified public accountant as to whether the plan's financial statements and schedules are fairly presented. However, no such opinion is required with respect to a plan covering fewer than 100 participants.
- Section 345 clarifies that plans filing under a group of plans need only submit an audit opinion if they have 100 participants or more.
- Section 345 is effective on the date of enactment of this Act.

SECURE 2.0 ACT OF 2022

Section 350 – Safe harbor for corrections of employee elective deferral failures.

- The IRS has issued guidance on the correction of employee elective deferral failures relating to default enrollment of employees into retirement plans. This guidance includes a safe harbor, which expires December 31, 2023, that permits correction if notice is given to the affected employee, correct deferrals commence within certain specified time periods, and the employer provides the employee with any matching contributions that would have been made if the failure had not occurred. Employers are concerned about the lapse of the safe harbor at the end of 2023.
- Section 350 eases these concerns by allowing for a grace period to correct, without penalty, reasonable errors in administering these automatic enrollment and automatic escalation features. Errors must be corrected prior to 9½ months after the end of the plan year in which the mistakes were made.
- Section 350 is effective to errors after December 31, 2023.

Title VI – Revenue Provisions

Section 602 – Hardship withdrawal rules for 403(b) plans.

- Under current law, the distribution rules for 401(k) and 403(b) are different in certain ways that are historical anomalies for varied reasons. For example, for 401(k) plans, all amounts are available for a hardship distribution. For 403(b) plans, in some cases, only employee contributions (without earnings) are available for hardship distributions.
- Section 602 conforms the 403(b) rules to the 401(k) rules, effective for plan years beginning after December 31, 2023.

Section 603 – Elective deferrals generally limited to regular contribution limit.

- Section 603 provides all catch-up contributions to qualified retirement plans are subject to Roth tax treatment, effective for taxable years beginning after December 31, 2023.
- An exception is provided for employees with compensation of \$145,000 or less (indexed).

Section 604 – Optional treatment of employer matching or nonelective contributions as Roth contributions.

- Under current law, plan sponsors are not permitted to provide employer matching contributions in their 401(k), 403(b), and governmental 457(b) plans on a Roth basis. Matching contributions must be on a pretax basis only.
- Section 604 allows defined contribution plans to provide participants with the option of receiving matching contributions on a Roth basis, effective on the date of enactment of this Act.

SECURE 2.0 ACT OF 2022

Section 606 – Enhancing retiree health benefits in pension plans.

- Under current law, an employer may use assets from an overfunded pension plan to pay retiree health and life insurance benefits. These rules sunset at the end of 2025.
- Section 606 extends the sunset date to the end of 2032 and would permit transfers to pay retiree health and life insurance benefits provided the transfer is no more than 1.75% of plan assets and the plan is at least 110% funded.
- Section 606 is effective for transfers made on or after the date of enactment of this Act.

The research, views and opinions contained in these materials are intended to be educational; may not be suitable for all investors; and are not tax, legal, accounting or investment advice.

Securities, when presented, are offered and/or distributed by Empower Financial Services, Inc., Member FINRA/SIPC. EFSI is an affiliate of Empower Retirement, LLC; Empower Funds, Inc.; and registered investment adviser Empower Advisory Group, LLC. This material is for informational purposes only and is not intended to provide investment, legal or tax recommendations or advice.

“EMPOWER” and all associated logos and product names are trademarks of Empower Annuity Insurance Company of America.

©2023 Empower Retirement, LLC. All rights reserved. GEN-FBK-WF-2257980-0123 RO2656570-1222