

January 2023

President Biden Signs the SECURE 2.0 Act Into Law

On December 23, 2022, Congress passed the SECURE 2.0 Act of 2022 (“SECURE 2.0”). President Biden signed it into law on December 29. The statute is the final compilation of several bills: (1) the Securing a Strong Retirement Act, which passed the House of Representatives 414-5 in March of 2022; (2) the Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg Act (“RISE & SHINE”), which passed unanimously through the Senate’s Health, Education, Labor & Pensions Committee; and (3) the Enhancing American Retirement Now Act (“EARN”) which passed unanimously through the Senate Finance Committee.

SECURE 2.0 contains a wide array of mandatory and optional changes for retirement plans under both the Employee Retirement Income Security Act (“ERISA”) and the Internal Revenue Code (the “Code”). While the provisions of SECURE 2.0 would become effective operationally at different points, plan sponsors would not have to amend their plan documents to comply with the new SECURE 2.0 rules until the close of the 2025 plan year (2027 in the case of governmental plans). As with the Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE 1.0”), the IRS may provide extensions for this deadline. This paper highlights the provisions of SECURE 2.0 that significantly impact qualified retirement plans and plan participants.

Gallagher Insights

From the perspective of retirement plan sponsors and administrators, SECURE 2.0 is not perfect but offers plenty of exciting mandatory and optional changes. It contains some provisions that impose additional requirements and mandates with which we must comply. However, the statute overall makes many significant adjustments to the compliance rules that improve retirement plan policy for both retirement plan sponsors/administrators and participants. SECURE 2.0 largely enjoyed broad support from both political parties.

Plan administrators must be extremely aware of when the different rules under SECURE 2.0 become applicable. Gallagher will continue to give you the most up to date information on what steps must (or may) be taken and when. Additionally, we expect in 2023 and 2024 a significant amount of regulatory activity interpreting the many provisions of the new legislation. Your Gallagher consultant will make sure that you have the current status on all new developments as they happen. If you have any questions about the terms of SECURE 2.0 and how it impacts your plan, please reach out to your Gallagher consultant.

SECURE 2.0 Provisions – Gallagher has summarized the key provisions below split out into five sections: Plan Design Changes, Required Minimum Distribution and Life Annuity Changes, Plan Distribution Changes, Notice and Disclosure Changes and Miscellaneous

Section 1: Design Changes

I. Expanding Automatic Enrollment – Mandatory, if applicable:

SECURE 2.0 requires all newly established Code Section 401(k) and 403(b) plans (referred to as “401(k)” or “403(b)” plans) to have an eligible automatic contribution arrangement (“EACA”). The employees may opt out of deferring into the plan, or select a deferral rate different from the default. But for employees that do not make an affirmative election, the initial automatic enrollment default rate must be at least 3 percent but no more than 10 percent. The default rate must be increased each year by 1 percent until it reaches at least 10 percent (but not more than 15%). The default investment for participants that do not make an affirmative investment direction must meet all the requirements of a Qualified Default Investment Alternative (“QDIA”).

Participants must be given the opportunity to withdraw the automatic deferrals within 90 days of their initial enrollment. The requirement will not apply to existing 401(k) and 403(b) plans. Nor would it apply to SIMPLE plans. SECURE 2.0 also contains exceptions for businesses with 10 or fewer employees, new companies that have been in business for less than 3 years, church plans and governmental plans. The automatic enrollment requirement applies to any plan adopted after the enactment date of SECURE 2.0, but the plan need not comply with the rule until plan years beginning in 2025.

II. Permit Matching Contributions on Student Loan Payments – Optional:

SECURE 2.0 would permit a plan sponsor to make matching contributions to a 401(k) plan, 403(b) plan, SIMPLE IRA or governmental 457(b) plan based on the participant’s repayment of student debt. The vesting schedule for matching contributions made on student loan repayments must be identical to the vesting schedule for matching contributions made on elective deferrals. The plan sponsor can rely on employee certification regarding the student debt repayments. This type of benefit would not assist the employee in repaying their student loans. But it would increase their retirement security by allowing them to receive matching contributions at a time when they might not otherwise be saving for retirement.

Previously, the IRS indicated that nonelective contributions (not matching contributions) could be made to a plan based upon the participant’s repayment of student debt. However, making a nonelective contribution in this manner can create significant complexity with respect to nondiscrimination testing. Allowing the student debt based contribution to be made as a match will simplify the plan’s nondiscrimination testing. Additionally, SECURE 2.0 permits a plan to test separately the employees who receive matching contributions based on student loan repayments. This provision becomes effective for plan years beginning in 2024.

III. Higher Catch-up Contribution for Participants at Age 60 – Optional:

Participants who have attained age 50 may make catch-up contributions to their retirement plan above the general Code Section 402(g) cap. The limit on catch-up contributions for 2023 is \$7,500. In SIMPLE plans, the 2023 catch-up limit equals \$3,500. SECURE 2.0 would increase these limits for participants during the taxable years in which they turn 60, 61, 62 and 63. The increased catch-up limit would not apply in the years the participant turns age 64 or older. For those eligible participants in 401(k), 403(b) and governmental 457(b) plans, SECURE 2.0 increases the catch-up to the greater of \$10,000 or 150% of the standard catch-up limit. For SIMPLE Plans, the increased catch up limit equals the greater of \$5,000 or 150% of the standard catch-up limit. The higher catch-up limits will be adjusted for inflation. This provision becomes effective for plan years beginning in 2025.

IV. Reduction in Eligibility Requirement for Long-Term, Part-Time Workers – Mandatory:

The SECURE 1.0 requires employers to allow long-term, part-time workers to defer into their 401(k) plans once the employee has worked three consecutive years during which they complete at least 500 hours of service in each year. When an employee meets that standard, they must become eligible to defer into the plan, but need not become eligible for employer contributions. Union employees are exempt from this rule. The plan can still require that the employee work a full year of service (1,000 hours in a 12 month eligibility computation period) before becoming eligible for employer contributions.

SECURE 2.0 allows those long-term, part-time workers to defer earlier by reducing the three-year rule to two years. This provision becomes effective for plan years beginning in 2025. SECURE 2.0 also clarifies that, for employees that become eligible under the two-year rule, years prior to 2021 are disregarded for purposes of vesting, similar to how such years are disregarded for eligibility. The statute also applies the two-year, 500-hour eligibility rule to ERISA governed 403(b) plans.

V. Provisions for Emergency Savings – Optional:

SECURE 2.0 has two optional provisions allowing participants to use their retirement plan for covering emergency expenses.

- a. First, the statute adds a new optional distribution trigger for emergencies, along with an exception to the 10% early distribution tax. Only one distribution is permissible each calendar year of up to \$1,000 (as adjusted annually for inflation). An emergency expense is any “unforeseeable or immediate financial need relating to necessary personal or family emergency expenses.” Plan administrators can rely upon the participant’s written certification that they meet that emergency standard. Distributions taken due to an emergency can be repaid into the plan within three years. When a participant takes an

emergency expense distribution, they cannot take another one during the following three calendar years unless the original distribution is repaid into the plan. This provision becomes effective in 2024.

- b. The statute also creates optional “pension-linked emergency savings accounts” for defined contribution plans, including 401(k), 403(b) and governmental 457(b) plans. These accounts must be established on a Roth basis, and are only available to non-highly compensated employees. The plan can be structured to allow participants to elect deferrals into the account, or as an automatic enrollment feature with a maximum default deferral rate of 3%. These accounts do not have a minimum contribution, but contributions must stop at \$2,500 (as adjusted annually for inflation). Distributions from the account are allowed at least once per month “at the discretion of the participant”, and are exempt from the 10% penalty for early distributions. The first four withdrawals from the account each plan year may not be subject to any withdrawal fees. Plans that add pension-linked emergency savings accounts must provide an annual participant notice regarding the feature. This provision becomes effective beginning with the 2024 plan year.

VI. Increase in Cash Out Limit – Optional:

Currently, the Code requires participant consent to any distribution from a defined contribution retirement plan if the account balance exceeds \$5,000. If a terminated employee’s account holds \$5,000 or less, the plan administrator can force a distribution of the account without the participant’s consent. Accounts between \$1,000 and \$5,000 must be rolled into an IRA rather than forced out in a taxable distribution. Effective in 2024, SECURE 2.0 increases the cash out limit from \$5,000 to \$7,000. This provision will allow plans to sweep out more small accounts.

VII. Permitting Small Financial Incentives for Deferring Into a Plan – Optional:

SECURE 2.0 would permit plan sponsors to provide small financial incentives to employees for deferring into a 401(k) plan or 403(b) plan, such as gift cards in small amounts. The incentives cannot be paid for from plan assets. Individuals can be motivated by immediate financial incentives, even if small. Offering small immediate incentives could increase participation rates. This provision becomes effective for plan years beginning in 2023.

VIII. Starter 401(k) – Optional:

Under SECURE 2.0, companies that do not sponsor a retirement plan will have the option to adopt a “starter 401(k) deferral-only arrangement”. The plan must automatically enroll participants using a default rate between 3% and 15%. The annual deferral limit is \$6,000 (as adjusted annually for inflation), with an additional catch-up of \$1,000 at age 50. As the term “deferral-only” suggests, the starter 401(k) plan cannot have any employer contributions. The statute exempts a starter 401(k) from ADP testing. SECURE 2.0 also allows tax-exempt

entities to sponsor a “safe harbor deferral-only” 403(b) plan under the same rules. Because 403(b) plans generally are exempt from the ADP test, the plan would effectively be a “safe harbor” plan. Both types of plans will be exempt from top-heavy testing. This provision is effective for plan years beginning in 2024.

IX. Roth Contributions for Catch-up Deferrals – Mandatory, if applicable:

Under SECURE 2.0, any 401(k) plan, 403(b) plan or governmental 457(b) plan that permits participants to make catch-up contributions must require such contributions to be designated Roth contributions, starting in 2024. This restriction will only apply to participants whose compensation during the prior year exceeds \$145,000 (as adjusted annually for inflation). Participants who earned \$145,000 or less in the prior year can still defer catch-up contributions on a pre-tax basis. Participants who are over age 50 and earn more than \$145,000 could not elect to make their catch-up contributions on a pre-tax basis. This provision may increase the number of retirement plans adopting a Roth feature. This rule would not apply to SIMPLE IRA plans or SEP plans.

X. Roth Option for Employer Matching or Nonelective Contributions – Optional:

Under current rules, any employer matching and nonelective contributions made to a 401(k) plan, 403(b) plan or governmental 457(b) plan can only be made on a pre-tax basis. Neither the participant nor the plan sponsor can elect to have employer contributions made on a Roth basis. Under SECURE 2.0, plans may elect to permit an employee to designate some or all of their matching or nonelective contributions as designated Roth contributions. As with any Roth contribution, participants must include an employer contribution that is a designated Roth contribution in their taxable gross income. Participants can elect to treat employer funds as a Roth contribution only if the amount is fully vested. This rule can be applied to any contributions made after the enactment of SECURE 2.0.

Section 2: Required Minimum Distribution and Life Annuity Changes

I. Increase in Required Distribution Beginning Date Age:

The SECURE 1.0 increased the required beginning date for plan distributions from age 70½ to age 72. Under SECURE 2.0, the required beginning date would increase to age 73 in 2023, and to age 75 in 2033.

II. Changes to the Required Minimum Distributions (RMDs) Rules:

The Code imposes an excise tax on any missed RMDs equal to 50% of the amount that should have been distributed. The Code imposes the excise tax on the participant, not the plan or the plan sponsor. SECURE 2.0 would reduce the penalty for failure to take RMDs from 50 to 25 percent. SECURE 2.0 further reduces the excise tax from 25 percent to 10 percent, if the error is corrected timely. This provision becomes effective for taxable years beginning in 2024.

Additionally, the Code does not currently require RMDs from Roth IRAs. Roth accounts in 401(k), 403(b) and governmental 457(b) plans are subject to the RMD rules. SECURE 2.0 eliminates the pre-death distribution requirement for Roth accounts in employer plans. This provision becomes effective for taxable years beginning in 2024.

Finally, RMD rules currently require that any annuity in a defined contribution plan account be treated separately from the rest of the account, resulting in higher RMDs. SECURE 2.0 permits the plan to aggregate distributions from both portions of the account for purposes of determining minimum distributions, potentially allowing for lower RMDs.

III. Removing Certain Barriers for Life Annuities:

Treasury regulations relating to RMDs contain a rule precluding annuity products from providing payments that start out small and increase over time. The rule can prohibit provisions that provide only modest benefit increases under life annuities. For example, the rule can prevent guaranteed annual increases of only 1 or 2%, return of premium death benefits and period certain guarantees. SECURE 2.0 would eliminate this restriction, allowing for more flexibility in annuities paid from qualified retirement plans. This provision is effective for calendar years starting in 2022.

IV. Increases in Permissible Qualifying Longevity Annuity Contract Limits:

Qualifying longevity annuity contracts (“QLACs”) are deferred annuities that begin payment well after retirement. QLACs are a way for retirees to hedge against the risk of outliving their retirement savings. SECURE 2.0 contains provisions making the use of QLACs more practical. The treasury regulations exempt QLACs from the RMD rules until payments commence. However, the regulations imposed certain limits on the exemption. SECURE 2.0 repeals the limit that the QLAC premium cannot exceed 25% of the participant’s account balance, and increases the overall QLAC limit from \$125,000 to \$200,000 (as adjusted annually for inflation). The statute also would allow for QLACs with spousal survival rights.

V. Exchange-Traded Funds for Annuity Products:

Exchange-traded funds (ETFs) are pooled investment funds. Unlike mutual funds, their shares are traded on stock exchanges, and can be traded throughout the day, rather than having to wait until after the market closes. ETFs are used in some qualified retirement plans and IRAs. However, Treasury regulations prevent ETFs from being available through annuities. SECURE 2.0 directs the Treasury department to update the regulations to facilitate the creation of a new type of ETF that is “insurance-dedicated”, allowing annuity products to invest.

Section 3: Plan Distribution Changes

I. 403(b) Hardship Distributions:

Recent developments have resulted in a number of changes to hardship distributions for 401(k) plans. For example, plans can now allow for hardship distributions from Qualified Nonelective Contributions and Qualified Matching Contributions (including safe harbor contributions). Additionally, the Treasury Regulations were revised to adjust a number of requirements, including removal of the rule that the participant must take a plan loan (if available) prior to taking a hardship distribution. SECURE 2.0 updates the 403(b) hardship rules to make them consistent with these changes. This provision becomes effective for plan years beginning in 2024.

II. Hardship Distributions Streamlined:

Under the current rules, a plan administrator can rely on a participant's representation that they have insufficient liquid assets to satisfy the hardship expense. But they cannot rely on the participant's representation that a hardship event has occurred. SECURE 2.0 allows 401(k) and 403(b) plan administrators to rely on a written certification from the participant that they have a financial need due to a hardship and that the requested amount is not more than what they need to meet the hardship. The statute says that the IRS "may" adopt regulations disallowing the administrator's reliance if they have actual knowledge that the participant's representation is not correct. The same rules will apply to unforeseeable emergencies in governmental 457(b) plans. This provision becomes effective for plan years starting in 2023.

III. Distributions to Victims of Domestic Abuse – Optional:

As a rule, participants who take distributions from retirement plans before turning age 59½ must pay a 10% excise tax on the distribution amount, unless a specific exception applies. SECURE 2.0 adds a new optional distribution trigger for victims of domestic abuse, along with an exception to the 10% early distribution tax. The distribution can equal 50% of the participant's vested account up to \$10,000 (as adjusted annually for inflation). The new exception applies to anyone who has in the prior 1-year period experienced "physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim's ability to reason independently, including by means of abuse of the victim's child or another family member living in the household." Distributions taken due to domestic violence can be repaid into the plan within three years. This provision becomes effective in 2024.

IV. Distributions to Terminally Ill Participants

SECURE 2.0 also exempts from the 10% tax any distribution to a participant who is terminally ill. However, the statute does not create a specific distribution trigger for terminally ill participants. A terminally ill individual is someone who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 84 months or less after the date of the certification. Distributions to a terminally ill participant can be repaid into the plan within three years. This provision becomes effective immediately upon the enactment of SECURE 2.0

V. Disaster Relief Distributions – Optional:

In prior years, Congress has frequently passed retirement plan relief for participants who are impacted by a specific federally declared disaster. SECURE 2.0 creates a permanent set of rules designed to provide that relief. It allows participants to take “qualified disaster recovery distributions” for participants that (1) live within a federally declared disaster area and (2) have sustained an economic loss due to the declared disaster. The distribution cannot exceed \$22,000 with respect to any specific disaster. The participant need not pay the 10% extra tax on early distributions, and can repay the amount within three years. Additionally, the participant can include the distribution in their taxable income ratably over the course of three years.

Plans can also offer special participant loan rules to participants who meet the requirements for a disaster distribution. Specifically, the plan can increase the maximum loan amount to \$100,000, up to the full amount of the participant’s vested account. The plan can also allow a delay in the beginning of loan repayments, including an extension of the five year deadline for completely repaying the loan.

VI. Deadline for Repaying Qualified Birth or Adoption Distributions (“QBADs”) – Optional:

SECURE 1.0 added QBADs, an optional distribution trigger for participants with new children through birth or adoption. SECURE 1.0 allowed participants to re-contribute the QBAD back into the plan, but did not specify a deadline for re-contributing the amount. SECURE 2.0 clarifies the rule to give parents up to three years to return the QBAD back to the plan. This provision becomes effective with respect to any QBAD made after the enactment of SECURE 2.0. The deadline for recontributing QBADs taken prior to the statute’s enactment is January 1, 2026.

VII. Distributions for Long Term Care Contracts – Optional:

SECURE 2.0 allows 401(k) and 403(b) plans to permit distributions for the purposes of allowing the participant to pay the premium on a long term care contract. The distribution

cannot exceed the lower of 10% of the participant's vested account balance or \$2,500 (as adjusted annually for inflation). The participant must file the long term care contract with the plan. The 10% extra tax on early distributions will not apply to long term care distributions. This provision becomes effective three years after the enactment of SECURE 2.0.

See also, Provisions for Emergency Savings – Optional above

Section 4: Notice and Disclosure Changes

I. Paper Statements Required:

Defined contribution plans that allow participants to direct investments must provide participants with quarterly benefits statements. SECURE 2.0 would require defined contribution plans to provide a paper benefit statement at least once annually, unless a participant affirmatively elects otherwise. The other three quarterly statements could be provided electronically if certain requirements are met. For defined benefit plans, SECURE 2.0 requires that the participant receive a paper statement once every three years, unless a participant affirmatively elects otherwise. This rule would be a departure from current rules that allow for all participant benefit statements to be delivered electronically if certain requirements are met. This provision becomes effective for plan years starting in 2026.

II. Eliminating Disclosure Requirements for Unenrolled Participants:

ERISA and the Code require plan sponsors to provide numerous disclosures to employees that are eligible for a qualified retirement plan. For eligible employees who have not elected to participate in the plan (“unenrolled participants”), these notices may be unnecessary. SECURE 2.0 relieves defined contribution plans from the requirement to provide ERISA or Code notices to unenrolled participants. The plan would still be required to send an annual reminder notice of the participant's eligibility to participate in the plan. If the participant requests a copy of any otherwise required disclosure, the plan sponsor must provide it. Plans must still provide unenrolled participants all required notices relating to initial eligibility under the plan, such as the Summary Plan Description (“SPD”). This provision becomes effective for plan years beginning in 2023.

III. Benchmarks for Funds with Mixed Asset Classes:

The DOL's participant fee disclosure rule requires defined contribution plans to provide participants with each investment alternative's historical performance, benchmarked against an appropriate index. The rule does not address appropriate benchmarks for investments that include a mix of asset classes (such as target date funds). SECURE 2.0 directs the DOL to amend its regulations within the next two years so that an investment that uses a mix of asset classes can be benchmarked against an appropriate blend of broad-based securities market

indices. This adjustment to the participant fee disclosure rules is intended to assist participants in selecting investments by providing better comparisons.

IV. Lump Sum Notice for Defined Benefit Plans:

SECURE 2.0 requires a new participant disclosure for defined benefit plans that add a window for participants to elect a lump sum distribution. The notice must be provided 90 days before the lump sum can be elected. The requirement is designed to provide participants with critical information they will need to make a distribution election, including (1) all available benefit options, (2) an explanation of how the lump sum will be calculated, including interest rate and mortality assumptions, (3) a statement that they may wish to consult an advisor regarding the decision, (4) general tax rules for the lump sum, including rollover information and (5) the potential ramifications of taking the lump sum, including longevity risk & loss of Pension Benefit Guarantee Corporation protection. The statute requires the DOL to issue a model notice for this purpose. This provision becomes effective after appropriate guidance is issued by the DOL.

Section 5: Miscellaneous

I. Revisions to the Employee Plans Compliance Resolution System:

The Employee Plans Compliance Resolution System (“EPCRS”) is the IRS’ program for fixing qualification errors in retirement plans. SECURE 2.0 expands the EPCRS to allow plans to self-correct virtually any operational error, regardless of how long ago the error occurred (unless the IRS catches an uncorrected error during an audit). Plans still have to establish reasonable practices and procedures to be eligible for self-correcting errors, and the self-correction will need to be completed within a reasonable period after the error is found. SECURE 2.0 also applies EPCRS corrections to some IRA errors. Self-correction continues to be unavailable for egregious errors or the diversion or misuse of plan assets. SECURE 2.0 also expands the self-correction possibility for plan loan errors. Additionally, the statute allows plans to correct overpayments to plan participants without attempting to make the participant repay the excess amounts. Any rollover of an overpayment would not be invalidated if certain requirements are met.

Finally, SECURE 2.0 provides relief to EACA plans when participants are not properly enrolled (or increased), or when a participant’s affirmative deferral election is not properly implemented. If corrected generally within 9½ months after the plan year end of when the error occurred, no corrective contribution is required for the missed deferral. The plan sponsor must provide any missed matching contributions (adjusted for earnings), as well as a notice to the impacted participants. The current EPCRS has the same rule, although it sunsets at the close of 2023. This change makes the correction method permanent. SECURE 2.0 also

makes clear that this correction method can be used for terminated participants, which is not allowed under current EPCRS rules.

II. Retirement Savings Lost and Found:

SECURE 2.0 would create a national, online searchable lost and found program for Americans' retirement accounts, run by the Department of Labor (the "DOL"). The intent is to assist people who are unable to find and receive the benefits that they earned because the company they worked for moved, changed its name or merged with a different company. The program would also assist plans that are unable to find participants because the former employees changed their names or addresses. The statute directs the creation of the database within two years following the enactment date.

III. 403(b) Plan Investments:

The Code generally limits 403(b) plan investments to annuity contracts and mutual funds. 403(b) plan participants have no access to collective investment trusts, which 401(a) plans use frequently due to their lower fees. SECURE 2.0 amends the Code to permit 403(b) plans funded through custodial accounts to invest in collective investment trusts. However, Security Exchange Commission rules would require certain exemptions to make this rule operative. SECURE 2.0 does not address securities laws that may continue to prevent such investments. Congress would need to make some additional adjustments to fully implement this change.

IV. Tax Credits for Small Employer Retirement Plan Startup Costs:

The Code currently allows small employers a tax credit for three years when starting a retirement plan. The credit equals 50% of administrative costs, up to an annual maximum of \$5,000. SECURE 2.0 would increase the credit to 100% of expenses for employers with up to 50 employees. The changes to the small employer credit becomes effective for taxable years beginning in 2023. Additionally, SECURE 2.0 clarifies that the credit can be claimed by an eligible employer who joins an existing plan, such as a Multiple Employer Plan ("MEP") or a Pooled Employer Plan ("PEP").

SECURE 2.0 also gives a new, additional credit for defined contribution plans equal to the amount contributed by the employer on behalf of employees, up to \$1,000 per-employee. The maximum \$1,000 credit would be available to employers with 50 or fewer employees, but would be phased out for employers with between 51 and 100 employees (resulting in lower maximum credits per employee). Eligible plan sponsors could take a dollar-for-dollar tax credit of their employer contributions for each employee in the first and second years, a credit for 75% of their contributions in the third year, 50% of their contributions in the fourth year, and 25% of their contributions in the fifth year. SECURE 2.0 provides no credit for

employer contributions after the fifth year. And no credit is permitted for employees earning more than \$100,000.

V. Military Spouse Retirement Plan Eligibility Credit for Small Employers:

SECURE 2.0 gives small employers (generally under 100 employees) a tax credit with respect to their defined contribution plans if they:

- Make military spouses eligible to participate within two months of hire,
- Upon eligibility, make military spouses eligible for any matching or non-elective contribution, and
- 100% vest military spouses in all employer contributions.

The employee must be non-highly compensated. The tax credit would equal (1) \$200 per military spouse, plus (2) 100% of all employer contributions (up to \$300) made on behalf of the military spouse. That's a maximum tax credit of \$500. This credit is available for three years with respect to each military spouse. Plan sponsors may rely on the employee's certification that their spouse is a member of the military. This provision becomes effective for taxable years beginning in 2023.

VI. Saver's Match:

Currently, the Saver's Credit provides certain lower-income taxpayers with a tax credit for retirement contributions up to \$2,000. SECURE 2.0 changes the tax credit to into a federal pre-tax matching contribution that must be deposited into a taxpayer's IRA or retirement plan. (Retirement plans are not required to accept the contribution.) The match equals 50 percent of IRA or retirement plan contributions up to \$2,000 per individual. The match phases out between \$41,000 and \$71,000 in the case of married taxpayers filing a joint return. The match is not available to taxpayers who are (1) under the age of 18, (2) claimed as a dependent on someone else's tax return or (3) a student. The match is reduced by any distribution taken during the taxable year or the prior 2 years. This provision becomes effective for taxable years beginning in 2027.

VII. Multiple Employer 403(b) Plans:

The SECURE 1.0 made MEPs more attractive by permitting PEPs effective in 2021. But a PEP could not be established as a 403(b) plan. SECURE 2.0 would allow 403(b) plans to participate in MEPs (including PEPs), generally under the SECURE 1.0 rules. This provision becomes effective in 2023.

VIII. Increasing Benefits for Prior Plan Year:

SECURE 1.0 allowed companies to adopt a new profit sharing plan for the prior year, as long as it is adopted before the tax return for that year is filed. This provision allows companies

who determine (while preparing their tax return) that they would benefit from some additional tax shelters to establish a retirement plan for the prior year, and make a deductible contribution.

SECURE 2.0 will allow discretionary plan document amendments to increase employer nonelective contributions for the prior year to an existing plan. The statute does not allow plan sponsors to retroactively add or increase a matching contribution. The amendment must be adopted prior to filing the company's tax return for the year in question. This provision becomes effective for plan years beginning in 2024.

IX. Eliminating the “First Day of the Month” Requirement for Deferral Elections in Governmental 457(b) Plans:

Unlike 401(k) plans or 403(b) plans, 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. SECURE 2.0 allows such elections in governmental 457(b) plans to be made at any time prior to the date that the compensation being deferred is made available to the participant. This provision becomes effective for taxable years beginning in 2023.

X. Audit Rules for Plans Filing a Consolidated Form 5500:

SECURE 1.0 allowed multiple plans to file a single, consolidated Form 5500 if certain requirements are met. The statute referred to this type of filing as a “group of plans”. Under DOL guidance, a group of plans cannot engage in a single, consolidated audit. Each plan must undergo its own separate audit, if required. SECURE 2.0 clarified this rule to make clear that small plans (with under 100 participants) will not need to engage in any independent audit, even while filing a consolidated Form 5500 return with other retirement plans. Like qualified 401(a) plans, individually designed 403(b) plans will not be required to request a determination letter from a legal perspective. However, having the IRS assurance that the plan document complies with all the requirements in the Code can give plan sponsors real peace of mind, and can make audits and correcting errors under the Employee Plans Compliance Resolution System much easier.

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