

### Retirement Plans: Grab Bag Guidance for SECURE 2.0

#### EXECUTIVE SUMMARY

The IRS and DOL have issued guidance on a variety of the wide-ranging changes under the SECURE 2.0 Act, including:

#### **IMPORTANT DATES**

April 1:

- Confirm Forms 1099-R filed with IRS (if filing electronically)
- Initial required minimum distributions (RMDs) due to participants who terminated employment after reaching their RMD age in 2023
- File Form 5330 to report and pay excise taxes for excess 2022 ADP/ACP contributions not timely corrected in 2023

April 15

- Fund contributions to defined benefit pension plans for 2024 Q1
- Distribute excess 2023 402(g) deferrals under 401(k)/403(b) plans

April 29:

- Distribute Annual Funding Notice (defined benefit pension plans with 100+ participants)

- Proposed IRS regulations involving the requirement that long-term part-time employees be permitted to make deferrals into a 401(k) plan;
- IRS Notice 2024-02 on implementation requirements, including plan amendment deadlines and certain optional changes;
- DOL FAQs and IRS Notice 2024-22 on pension linked emergency savings accounts; and
- DOL proposed regulations on automatic portability of retirement savings.

#### *Long-Term Part-Time Employees*

The IRS issued proposed regulations under SECURE 1.0 and SECURE 2.0 in November 2023 that apply to long-term, part-time employee ages 21 and older (“LTPT Employees”).

For the 2024 plan year, the rules under SECURE 1.0 require LTPT Employees who have 3 consecutive 12-month periods with at least 500 hours of service to be eligible to make deferrals under a 401(k) plan.

For the 2025 plan year, SECURE 2.0 shortens the wait for LTPT Employees, so that employees who have 2 consecutive 12-month periods with at least 500 hours of service must be eligible to make deferrals under 401(k) and 403(b) plans.

The proposed regulations include a significant level of detail, including definitions and clarifying that periods of service prior to 2021 are excluded for purposes of LTPT Employees’ eligibility and vesting. The proposed regulations are also explicit that LTPT Employees do not include individuals who do not meet plan eligibility for

reasons other than age and service (e.g., if excluded based on job classification or work location), but do not provide detailed guidance on what job-based exclusions are permitted or prohibited.

- ✓ **Action Steps for Employers:** Plan sponsors should review their 401(k) and 403(b) plans for any employee exclusions to ensure there is no conflict with the LTPT Employee requirements, to determine whether to exclude LTPT Employees from nondiscrimination and coverage testing, and to determine whether a plan amendment may be necessary or desirable.
  - In some cases, an eligibility exclusion may be outdated (e.g., the plan contains an exclusion for interns, but no interns have been employed and it is not anticipated that any will be hired), in which case a plan amendment removing such exclusion can avoid potential compliance concerns and simplify administration.
  - In other cases, the exclusion may be in conflict with the LTPT Employee requirements (e.g., a plan exclusion for part-time employees), in which case a plan amendment may be required to address the conflict and/or administrative steps may be necessary to ensure appropriate tracking of this subset of LTPT Employees with respect to employee deferrals.
  - If the LTPT Employee rules apply, keep in mind that a plan sponsor can always choose to implement a more generous plan design (e.g., immediate eligibility, full participation in the 401(k) plan), taking into account the costs and administrative considerations (e.g., burden of tracking a subset of employees, nondiscrimination testing).

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### *IRS Notice 2024-02: FAQ Guidance on SECURE 2.0 Implementation*

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On December 20, 2023, the IRS issued Notice 2024-02, which provides additional guidance on the implementation of various changes under SECURE 2.0. Notice 2024-02, styled as frequently asked questions, is a “grab bag” of guidance on implementing both **required** and **optional** changes under SECURE 2.0.

**Required Changes:** Notice 2024-02 extends the deadline for both required and discretionary amendments under SECURE 2.0 to December 31, 2026, with nuances for collectively bargained plans and governmental plans. Notice 2024-02 also provides additional detail on the requirement that 401(k) and 403(b) plans established after December 29, 2022 must have an automatic enrollment feature, including addressing how this requirement applies to a plan spinoff or merger.

**Optional Changes:** Notice 2024-02 addresses implementation on a variety of optional changes under SECURE 2.0, including:

- Financial incentives to enroll in a 401(k) or 403(b) plan (up to \$250, which can be made in installments);
- Distributions for terminal illness, which are not subject to the 10% early distribution penalty; and
- Participant elections to treat employer contributions as Roth after-tax contributions.

Given the many outstanding SECURE 2.0 implementation questions, Notice 2024-02 is welcome news—especially to third-party administrators and recordkeepers as they consider how to program and build out their systems for SECURE 2.0 changes.

- ✓ **Action Steps for Employers:** Implementation of any optional SECURE 2.0 change requires the plan sponsor to both assess the desirability of the change and the feasibility of implementation by the plan’s recordkeeper, administrator, and custodian. As a result, plan sponsors should regularly revisit the feasibility and timing of implementing SECURE 2.0 changes with the plan’s service providers. In light of the extended amendment deadline, plan sponsors who intend to wait to amend their plan should ensure a clear record of what changes are adopted operationally in order to avoid an inadvertent failure to formally adopt the change.

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### *Pension Linked Emergency Savings Accounts*

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The DOL and IRS have both issued initial guidance on pension linked emergency savings accounts (“PLESAs”). Created under SECURE 2.0, PLESAs are short term savings accounts maintained within a defined contribution plan (such as a 401(k) or 403(b) plan) that allow employees the ability to accrue savings up to a maximum of \$2,500 (as indexed) and make monthly account withdrawals.

The DOL issued a series of twenty FAQs covering a variety of PLESA topics such as:

- Eligibility and participation – Employers can choose to offer PLESAs maintained within their defined contribution plan and may also decide to automatically enroll participants into the PLESA program. Eligible PLESA participants do not have to participate in the employer-sponsored defined contribution plan to have a PLESA, and there cannot be a minimum balance requirement.
- Contributions – Employers that offer matching contributions for non-PLESA contributions must offer the same matching rate for PLESA contributions, with the matching contribution to be allocated to the participant’s retirement (non-PLESA) account. There are additional rules regarding contribution limits, including that a plan sponsor can require PLESA contributions to be whole dollar amounts.
- Distributions and withdrawals – Participants can withdraw PLESA funds at least once a month, not subject to pre-approval demonstrating an emergency, and there are no explicit restrictions on distribution options.
- Administration and investment – There are additional rules regarding notices, reporting, fund disclosures, accounting, allowable fees, and recordkeeping.

IRS Notice 2024-22, in contrast to the DOL guidance, focuses specifically on anti-abuse rules relating to employer matching contributions on PLESA contributions. Notice 2024-22 explicitly details reasonable anti-abuse procedures employers can implement to discourage manipulation of matching contribution rules, such as establishing reasonable procedures to limit the frequency or amount of matching contributions.

- ✓ **Action Steps for Employers:** The initial guidance is a welcome development, especially as many third party administrators have indicated a reluctance to even begin any systems updates to provide for PLESAs without further guidance from the government. While this guidance is initial and does not address all implementation issues, plan sponsors interested in implementing a PLESA should coordinate with their third-party administrator, recordkeeper and custodian to discuss feasibility and timing of adopting this discretionary feature based on this additional guidance.

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### *Automatic Portability*

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The DOL issued a proposed rule providing a prohibited transaction exemption in connection with automatic portability transactions, which are meant to aid workers in keeping track of their retirement savings by reducing cash-outs when changing jobs. An automatic portability transaction occurs when an employee's retirement savings (that is subject to the plan's cash-out provisions) is automatically transferred from a previous employer's retirement plan to a Safe Harbor IRA and then into the employee's active account in a retirement plan sponsored by the employee's new employer.

The proposed rule would create a prohibited transaction exemption for automatic portability providers receiving fees or compensation when facilitating an automatic portability transaction into Safe Harbor IRAs. The proposed rule details the requirements that automatic portability providers must satisfy to qualify for the exemption, including disclosing and setting reasonable fees, acknowledging their fiduciary status, not accepting fees for transferring into or a plan that is a plan of the provider or one of its affiliates, and protecting data and restricting its use.

- ✓ ***Action Steps for Employers:*** While automatic portability providers will handle the transfer of the employee's retirement savings, plan sponsors should be aware of the prohibited transaction exemption requirements when selecting an automatic portability provider and the impact of this feature on their retirement plans, including the potential need to provide education for new hires and employees who terminate their employment.

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### *Additional Information*

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Keep an eye out for a forthcoming invitation to our Benefits Seminar on May 1!

For additional information about these new retirement plan developments, or any other employee benefits matter, please contact any member of our Employee Benefits and Executive Compensation Group listed below.

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