RETIREMENT PLAN
SPOTLIGHT

USI CONSULTING GROUP

SECURE 2.0 Act Brings Major Retirement Plan Changes

On December 29, 2022 (the "Enactment Date"), the *SECURE 2.0 Act of 2022* ("SECURE 2.0") was signed into law. SECURE 2.0 is an enhancement to the *Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019* ("SECURE Act") and includes both mandatory and optional changes to the rules governing various types of retirement plans, such as defined benefit plans, 401(k) plans, 403(b) plans, governmental 457(b) plans and Individual Retirement Accounts ("IRAs"). While most of the SECURE 2.0 changes will not become effective until 2024 or later, certain (mainly optional) provisions are effective as of the Enactment Date.

Below is a summary of some of the key retirement plan provisions under SECURE 2.0, and their respective effective dates. Please note that, as with any complex legislation, additional clarifying guidance from the Internal Revenue Service ("IRS") and Department of Labor ("DOL") is expected to be issued later this year and updates will be provided as such additional information becomes available. Also note that amendments for the SECURE 2.0 provisions will generally need to be adopted no later than last day of the first plan year beginning on or after January 1, 2025 (later deadlines apply to governmental plans). In the meantime, retirement plans must be operated in good faith compliance with any mandatory SECURE 2.0 provisions or any optional changes adopted at the discretion of the plan sponsor.

Effective Date(s)	Summary of Provisions
Upon Enactment (December 29, 2022)	**Self-Certification of Hardship Withdrawals (Optional)** Effective for plan years beginning on or after the Enactment Date, 401(k) and 403(b) plan administrators may rely upon an employee's certification of the need for a hardship withdrawal, the amount needed, and that no alternative resources are available. Similar certifications may be used for unforeseeable emergency distributions under governmental 457(b) plans. **Employer Contributions Treated as Roth Contributions (Optional)** Qualified plans, 403(b) plans, and governmental 457(b) plans may allow participants to designate fully vested employer matching or nonelective contributions as Roth contributions. If so designated, such contributions must be included in the participant's taxable W-2 income. **New Exceptions to 10% Early Withdrawal Penalty** The 10% income tax penalty for early withdrawals no longer applies to (1) distributions to individuals whose physician certifies that they suffer from an illness or condition reasonably expected to result in death in no more than 7 years; or (2) otherwise eligible distributions on account of a qualified federally declared disasters. The following rules also apply to loans and distributions that occur on or after January 26, 2021 incident to qualified federally declared disasters: ▪ Up to $22,000 may be distributed to a participant per disaster; ▪ Inclusion in gross income may be spread over a 3-year period; ▪ Amounts may be recontributed to a plan or account during the 3-year period beginning on the day after the date of the distribution; ▪ Certain home purchase distributions can be recontributed to a plan or account if those funds were intended to purchase a home in a disaster area and were not so used because of the disaster; and ▪ The maximum loan amount for qualified individuals is increased and the repayment period is extended.

Upon Enactment

(December 29, 2022)

Repayment of Qualified Birth or Adoption Distributions

For distributions made after the Enactment Date the recontribution period is limited to three years. For distributions occurring prior to the enactment of SECURE 2.0, the repayment period ends December 31, 2025.

Recovery of Retirement Plan Overpayments

For distributions made after the Enactment Date, qualified plans and 403(b) plans including governmental plans (but excluding 457(b) plans) may elect to not recover an "inadvertent benefit overpayment" or may amend the plan to permit the increased benefits, considering applicable limitations such as the limit on annual benefit payments. Inadvertent overpayments are those for which the participant or beneficiary has no responsibility. In certain cases, the overpayment can be treated as an eligible rollover distribution if the payment otherwise meets rollover requirements. Additionally, repayments of overpayments may be treated as permissible rollovers if paid from rolled over amounts.

First Day of month Rule Eliminated for Govt. Section 457(b) Plans

Effective for taxable years beginning after the Enactment Date the rule for governmental 457(b) plans will be the same as the rule for 401(k) and 403(b) plans and allow participants to change their deferral rate at any time before compensation is available to the participant. For tax-exempt 457(b) plans, participants may defer compensation for any calendar month only if an agreement providing for such deferral has been entered into before the beginning of such month.

Financial Incentives for Making Plan Contributions

Under current law, employers may provide matching contributions as a long-term incentive for employees to contribute to a 401(k) plan. However, immediate financial incentives (like gift cards in small amounts) are prohibited even though individuals may be especially motivated by them to join their employers' retirement plans. Effective for plan years beginning after the Enactment Date, employers may offer deminimis 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).

2023, generally

Effective as of January 1, 2023 or for taxable year after December 31, 2022, if not calendar year

Increase In Required Beginning Date for RMDs

The Required Minimum Distribution ("RMD") age is increased to age 73 for individuals who attain age 72 after December 31, 2022. The RMD age will be further increased to age 75 for individuals who attain age 74 after December 31, 2032.

Reduction of Excise Tax for Failure to Take RMDs

Effective for taxable years beginning after the Enactment Date, the excise tax for the failure to take RMDs is reduced from 50% to 25%. However, if a taxpayer corrects the shortfall during a two-year correction window, the tax is further reduced to 10%.

Tax Credit for Small Employer Retirement Plan Start-Up Costs

For small employers (under 50 employees) the tax credit is increased from 50% (which remains effective for small employers with under 100 employees) to 100% of qualified plan start-up costs. An additional credit for 5 years of up to $1,000 per employee equal to the applicable percentage of eligible employer contributions to an eligible employer plan, not including a defined benefit plan. The credit applies for the first 50 employees and is phased out for the next 50 employees. There is an exception for employees with wages over $100,000 (indexed).

2024

Effective as of January 1, 2024 or for taxable year after December 31, 2023, if not calendar year

Catch-Up Contribution Changes

Effective for taxable years beginning after December 31, 2023, for eligible participants whose prior year wages are more than $145,000 (indexed), catch-up contributions to 401(a) qualified plans, 403(b) plans and governmental 457(b) plans for individuals age 50 or older must be made on a Roth basis.

2024

Effective as of January 1, 2024 or for taxable year after December 31, 2023, if not calendar year

Domestic Abuse Retirement Plan Withdrawals (Optional)

Effective for distributions made after December 31, 2023, plans may permit early withdrawals on account of domestic abuse that are not in excess of $10,000 (indexed) or 50% of the vested account value are permitted and are not subject to the 10% early withdrawal penalty. Similar to QBADs, the withdrawal may generally be recontributed to applicable eligible retirement plans. In addition, in-service distributions from 401(k), 403(b) and governmental 457(b) plans are permitted on account of domestic abuse.

Retirement Plan Withdrawals Incident to Emergencies (Optional)

Effective for distributions made after December 31, 2023, plans may permit early withdrawals of up to $1,000 per year which are not subject to the 10% early withdrawal penalty. The withdrawal for these "unforeseeable or immediate financial needs" may be repaid within 3 years. Only one such withdrawal is permitted in the 3-year repayment period if the first withdrawal is not repaid.

Roth RMD Distribution Rules

Effective generally for taxable years beginning after December 31, 2023, the pre-death RMD exemption applicable to Roth IRAs is now applicable to Roth amounts in 401(k) and 403(b) plans. The exemption is not available for distributions required before January 1, 2024.

2024, generally

Effective for plan years beginning after December 31, 2023

Qualified Student Loan Payments (Optional)

Effective for plan years beginning after December 31, 2023, employer contributions to 401(k), 403(b) and governmental 457(b) plans on behalf of participants for "qualified student loan payments" may be treated as matching contributions. The qualified student loan payments are treated as elective deferrals for purposes of the matching contribution requirement under a basic safe harbor 401(k) plan, automatic enrollment safe harbor 401(k) plan and for 401(m) safe harbors. The ADP test may be applied separately for such contributions. An employer may rely on employee certification of the student loan payments.

Increased Dollar Limit for Mandatory Distributions

Under current law, employers may immediately distribute without the consent of the participant and directly rollover former employees' retirement accounts from a workplace retirement plan into an IRA if their balances are not in excess of $5,000. Effective for distributions after December 31, 2023, the limit increases from $5,000 to $7,000.

Application of Top-Heavy Rules Covering Excludable Employees

Effective for plan years beginning after December 31, 2023, a top-heavy plan that covers otherwise excludable employees (employees that do not satisfy the minimum eligibility requirements of age of 21 and one year of service) may perform separate top-heavy testing for excludable and non-excludable employees. This provision applies to any new plans established on or after the Enactment Date.

403(b) Plan Hardship Withdrawal Rules

Effective for plan years beginning after December 31, 2023, the hardship distribution rules for 403(b) plans are the same as for 401(k) plans. Therefore, a 403(b) plan may distribute QNECs, qualified matching contributions, and earnings on any of these contributions (including elective deferrals). It also provides that distributions from a 403(b) plan are not treated as failing to be made upon hardship solely because the employee does not take available loans.

Individual Account Plans Emergency Savings Accounts (Optional)

Effective for plan years beginning after December 31, 2023, a plan sponsor is permitted to amend its plan to offer short-term emergency savings accounts ("ESAs") as part of a defined contribution plan. ESAs must be funded post-tax with Roth contributions, and participants may be automatically enrolled at a rate of up to 3% of compensation. Contributions are capped at $2500 (indexed for inflation) or a lower amount determined by the sponsor, and there cannot be minimum contribution or balance requirements. Participants must be allowed to take at least one withdrawal per month, and the first four withdrawals per year cannot be subject to fees. ESAs may be invested in cash, interest bearing deposit accounts, and principal preservation accounts, and there is a fiduciary safe harbor for automatic enrollment related to this provision.

2024, generally

Effective for plan years beginning after December 31, 2023

Starter 401(k) Plans for Employers With No Retirement Plan

Effective for plan years beginning after December 31, 2023, employers that do not sponsor a retirement plan may 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 percent 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.

2025

Effective as of January 1, 2025 or for taxable year after December 31, 2024, if not calendar year

Increased Catch-Up Contribution Limits

Effective for taxable years beginning after December 31, 2024, catch-up contributions to 401(k), 403(b) and governmental 457(b) plans are increased for individuals at age 60, 61, 62 and 63 to the greater of:

- $10,000 or
- 150% of the regular catch-up amount in 2024 (indexed).

2025, generally

Effective for plan years beginning after December 31, 2024

Reduced Service Requirement for Long-Term Part-Time Workers

The required period of service is reduced from three consecutive years of service to two consecutive years of service (having worked a minimum of 500 hours of service per year and attained age 21 by the end of the 2 consecutive year period) in order for long-term part-time workers to be able to contribute to a 401(k).

Pre-2021 service is disregarded for the vesting of employer contributions and pre-2023 service is disregarded for eligibility and vesting purposes.

In addition, the long-term, part-time coverage rules are expanded to include 403(b) plans that are subject to ERISA.

Expanding Automatic Enrollment in Retirement Plans

Effective for plan years beginning after December 31, 2024, new 401(k) and 403(b) plans established after the Enactment Date must meet the requirements for an eligible automatic contribution arrangement (EACA), including automatic enrollment with a default rate of between 3% and 10% with a 90-day deferral refund feature, as well as automatic escalation of 1% per year up to a maximum of at least 10%, but no more than 15%.

Exemptions: Governmental plans, church plans, small employers with 10 or fewer employees and new employers that have been in existence for less than three years are all exempt from this requirement.

2026, generally

Effective 3 years after enactment of SECURE 2.0

Long-Term Care Insurance Purchased with Retirement Distributions

Effective beginning with distributions three years after the Enactment Date, retirement plans are permitted to distribute a certain amount per year for certain long-term care insurance contracts. The amount permitted is the lowest of:

- The amount paid by or assessed to the employee during the year for long-term care insurance;
- 10% of the employee's vested accrued benefit in the plan; or
- $2,500 (this dollar amount will be indexed for inflation beginning in 2025).

Such distributions from plans and IRAs are exempt from the 10% penalty on early distributions if used to pay premiums for high quality, long-term care insurance.

Miscellaneous SECURE 2.0 Changes

Defined Contribution Plans

- Paper benefit statement is required annually (2026).
- A "lost and found" database, known as the "Retirement Savings Lost and Found", will be established and running by the end of 2024 and list plans that hold terminated vested participants' account balances.
- Effective for plan years beginning after December 31, 2022, no longer requires employers provide certain intermittent ERISA or Code notices to unenrolled participants who have not elected to participate in a workplace retirement plan.

Defined Benefit Pension Plans

- The "Retirement Savings Lost and Found" (discussed above) will also list plans holding accrued benefits of terminated vested participants.
- Paper benefit statement required once every three years (2026).
- The PBGC variable rate premium indexation will end starting with the 2024 plan year and a flat amount will apply, starting with $52 per $1,000 of unfunded vested benefits.
- After the DOL issues regulations, enhanced lump sum window notices issued 90 days before the window will need to be provided to the PBGC and participants; the DOL will issue a model notice.
- Starting with the 2024 plan year, funding notices must show better representations of funded status.
- For purposes of the minimum funding rules, a pension plan is no longer required to assume that after the valuation date there will be future mortality improvements of greater than 0.78.

How USI Consulting Group (USICG) Assists

The USICG team can help answer any questions that you have regarding SECURE 2.0 and its discretionary and required changes to your plan. As noted above, the IRS and the DOL will be issuing additional guidance regarding the SECURE 2.0 provisions and some of the deadlines indicated above may change due to such guidance. As soon as additional information becomes available, we will provide updates to inform our clients about such guidance and its impact on plan compliance and administration.

The USICG team is always available to help retirement plan sponsors with documents, compliance and other matters, including those discussed here. Please contact your USICG Consultant or email **information@usicg.com**.

Your dedicated partner for retirement plan solutions | **information@usicg.com** | 860.633.5283 | **usicg.com** |

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