Provisions of SECURE 2.0 Act Applicable to Defined Benefit and Money Purchase Pension Plans

A Practical Guidance® Article by Kristy J. Wrigley-Durer, Crowell & Moring LLP

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Almost immediately after the passage of the SECURE Act in 2019, Congress set to work on what was already being referred to as "SECURE 2.0," with competing bills introduced in the House and Senate. The promised changes were anxiously awaited by sponsors of defined contribution plans, particularly 401(k), 403(b) and profit-sharing plans, and the SECURE 2.0 Act of 2022 (SECURE 2.0) was finally signed by President Biden on December 29, 2022. Division T of the Consolidated Appropriations Act of 2023, H.R. 2617 (Pub. L. No. 117-328). Indeed, most of the attention given to SECURE 2.0 since its passage has focused on the changes to 401(k), 403(b) and profit-sharing types of defined contribution plans. However, numerous provisions of the Act affect defined benefit and money purchase pension plans, as well.

The chart below briefly summarizes the significant provisions of the SECURE 2.0 Act applicable to single-employer defined benefit and money purchase pension plans. The summaries below are intended to assist plan sponsors, administrators and counselors of defined benefit and money purchase plans in identifying the applicable provisions the Act, but are not intended to provide an in-depth analysis of each applicable provision. The chart below also does not address provisions of SECURE 2.0 solely applicable to governmental, collectively bargained, multiple employer or pooled plans. Unless otherwise indicated below, the identified changes apply to both defined benefit and money purchase pension plans.

Act Sec.	**Description**	**Effective**
107	**RMD Age Increase.** Increases the required beginning date for purposes of requirement minimum distributions ("RMDs") from age 72 to age 73 beginning in 2023. Beginning in 2033, the required beginning date is further increased to age 75.	RMDs after December 31, 2022 for individuals who attain age 72 after that date
115	**Emergency Personal Expense Distribution.** Allows a participant to take a distribution for "unforeseeable or immediate financial needs relating to personal or family emergency expenses" without incurring a 10% early withdrawal penalty. Only one withdrawal per 3-year period is allowed unless the earlier withdrawal is repaid. If an emergency withdrawal is repaid, then one	Distributions made after December 31, 2022

	distribution per year is permitted. Emergency personal expense distributions are not available in defined benefit pension plans.	
201	**Changes to RMD Rules for Commercial Life Annuities.** Eases the RMD rules for life annuities by allowing *commercial* annuities issued in connection with an eligible retirement plan to provide some additional payment options, such as annuity payments that increase by a constant percentage at a rate less than 5% each year.	January 1, 2023
202	**QLACs.** Relaxes some of the limitations on qualifying longevity annuity contracts ("QLACs") that exist in current IRS guidance, including elimination of the 25% account balance limitation. See Treas. Reg. §§ 1.401(a)(9)-6, Q&A-17 and 1.408-8, Q&A-12.	QLACs purchased on or after December 29, 2022
301	**Overpayment Recovery.** Provides that a plan will not fail to be a tax-qualified plan merely because it fails to recoup an inadvertent benefit overpayment or because it is amended to allow for a previous overpayment. Also provides relief to plan fiduciaries that comply with new restrictions and parameters on recovery efforts (or the lack thereof).	December 29, 2022
302	**Reduced RMD Penalty.** While not directly applicable to plans themselves, SECURE 2.0 reduces the excise tax imposed on an individual for failing to take timely RMDs from a plan. The penalty is reduced from 50% of the shortfall to 25%; however, if the individual corrects the shortfall of distributions within a specified "correction window" after a penalty is assessed, the penalty will be reduced to 10%.	Taxable years beginning after December 29, 2022
303	**Retirement Savings Lost and Found.** Requires the DOL to create a searchable "lost and found" internet database to assist participants and beneficiaries in identifying retirement benefits and contacting plan administrators.	Directs the creation of the database by December 29, 2024
304	**Automatic Rollover Distribution Limit Increase.** Increases the maximum account size which can be automatically distributed and rolled over without a participant's consent from $5,000 to $7,000. See ERISA § 203(e)(1); I.R.C. §§ 401(a)(31)(B) and 411(a)(11)(A).	Distributions after December 31, 2022
305	**Expanded Self-Correction Opportunities.** Expands the self-correction opportunities available to employers under the IRS's Employee Plans Compliance Resolution System ("EPCRS"), including with respect to additional retroactive amendment opportunities, and directs the IRS to update the EPCRS program within the next two years. Currently set forth in Rev. Proc. 2021-30.	December 29, 2022

310	**Top Heavy Testing with Respect to Excludable Employees.** Permits a money purchase pension plan to disregard employees that do not satisfy the Code's minimum age and service eligibility rules (age 21 and 1 year of service) for purposes of annual top-heavy testing.	Plan years beginning after December 31, 2023
316	**Change to Discretionary Amendment Deadline.** Extends the date by which plans may be amended for discretionary changes that increase benefits to the employer's tax filing deadline, including extensions, for the immediately preceding taxable year in which the amendment is effective.	Plan years beginning after December 31, 2023
323	**Clarification of Substantially Equal Periodic Payment Rule.** Clarifies that the exception to the 10% early withdrawal penalty relating to substantially equal periodic payments applies after a rollover and for certain annuities or exchanges.	Annuity payments on or after December 29, 2022; transfers, rollovers and exchanges after December 31, 2023
327	**Surviving Spouse Election for RMD Purposes.** Allows a surviving spouse to be treated as deceased participant for RMD purposes.	January 1, 2024
331	**Permanent Disaster Relief.** Provides permanent relief in the event of any qualified federally declared disaster. Among other relief, participants may take distributions up to $22,000 without incurring the 10% early withdrawal penalty in the event of a disaster. This relief is not available to defined benefit pension plans.	Disasters occurring on or after January 26, 2021
334	**Qualified Long-Term Care Distributions.** Permits plans to distribute a limited amount each year for certain long-term care insurance contracts, and exempts those distributions from the 10% early withdrawal penalty. This distribution option is not available to defined benefit pension plans.	Distributions made after December 29, 2025
335	**Mortality Table Corrections.** Caps mortality improvement rates for valuation dates occurring on or after 2024 by providing that rates cannot assume future mortality improvements at any age greater than 0.78%.	December 29, 2022, but no practical impact until 2024
338	**Periodic Paper Statements.** For plans that do not satisfy the electronic disclosure safe harbor, requires at least one benefit statement each year to be provided on paper to money purchase plan participants unless the individual outs out of the paper requirement. For defined benefit plans, the requirement is one paper statement every three years. See 29 C.F.R. § 2520.104b-1(c).	Plan years beginning after December 31, 2025
339	**Recognition of Tribal Government for QDRO Purposes.** Allows plans to recognize domestic relations orders issued by Indian tribal governments ("Tribal domestic relations orders") as qualified domestic relations orders.	Orders received by plan administrators after December 31, 2022, including any order submitted for reconsideration after that date

342	**Notice Requirements for Lump-Sum Windows.** Requires defined benefit plan sponsors to provide participants and beneficiaries with specified information about temporary opportunities to elect a lump sum in lieu of future monthly payments at least 90 days before the decision period begins. Also requires plan sponsors to provide data to the DOL and PBGC regarding the lump sum payments.	Directs DOL and Treasury to issue joint regulations by December 29, 2023
343	**Annual Funding Notice Changes.** Updates the required information required to be included in a defined benefit pension plan's annual funding notice.	Plan years beginning after December 31, 2023
348	**Cash Balance Plan Testing.** Allows cash balance plans (a type of defined benefit pension plan) that have variable interest crediting rates to use a projected interest crediting rate that is "reasonable" but not in excess of 6%.	Plan years beginning after December 29, 2022
349	**Elimination of Variable Rate Premium Indexing.** Ends the indexing of the variable rate premium payable to the PBGC by defined benefit pension plans and sets the premium permanently at a rate of $52 per each $1000 of unfunded vested benefits.	December 29, 2022
501	**Statutory Amendment Deadline.** Requires plans to be amended for SECURE 2.0 changes no later than the last day of the first plan year beginning on or after January 1, 2025 (i.e., December 31, 2025 for calendar year plans); however, the plan still must operationally comply with any changes as of the statutory effective date of an applicable change.	December 29, 2022
606	**Use of Excess Pension Asset for Retiree Health Benefits.** Extends the sunset date from 2025 to 2032 for an overfunded defined benefit pension plans to use excess assets to pay retiree health and life insurance benefits.	Transfers after December 29, 2022

Related Content

Practice Notes

- SECURE 2.0 Act Impact on Retirement Plan Compliance and Administration
- SECURE 2.0 Act Tracker

Statutes and Regulations

- SECURE 2.0 Act (Division T of the Consolidated Appropriations Act of 2023, H.R. 2617 (Pub. L. No. 117-328))
- Setting Every Community Up for Retirement Enhancement (SECURE) Act (Div. O of the Further Consolidated Appropriations Act, 2020 (Pub. L. No. 116-94))

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Companies navigating the complex world of ERISA and taxation rely on Kristy Wrigley-Durer to provide experienced counsel regarding the design and compliance of their employee benefits plans and executive compensation arrangements. With more than 15 years of experience, including 10 years in-house with one of the largest private health care systems in the United States, she has designed and drafted all manner of qualified retirement plans, 403(b) plans, cafeteria plans, employee welfare benefit plans, and nonqualified deferred compensation arrangements. Kristy is also an experienced advisor relating to employee benefits matters in corporate mergers and acquisitions, divestitures, and joint venture transactions.

As part of her retirement plan consulting practice, Kristy has drafted and advised 401(k), profit-sharing, 403(b), pension, and money purchase pension and employee stock ownership (ESOP) plans, and has represented clients before the IRS, DOL, and PBGC, including through voluntary corrections programs. She routinely advises clients regarding their health and welfare plans, including group health plans, disability and life insurance benefits, cafeteria plans and flexible spending arrangements, severance, and all other fringe benefits with respect to ERISA, the Internal Revenue Code, HIPAA, COBRA, and the ACA.

Kristy also offers depth of experience in the unique world of benefits for tax-exempt organizations, including 403(b), 457(b), and 457(f) plans and their interaction with Code Section 409A. She regularly advises religious employers (such as schools, health care systems, and church organizations) regarding their non-ERISA church plans, including governance, structure, state law, and litigation implications. In her prior in-house role, Kristy led the internal employee benefits legal team of a complex health care system to ensure the legal and tax compliance of nearly 200 benefit plans covering more than 150,000 employees. In that role, she advised the boards and committees of the system and its subsidiaries, both taxable and nontaxable, and for-profit and not-for-profit versions, on all matters relating to employee benefit plans and executive compensation.