WINSTON & STRAWN LLP

PRESENTATION

SECURE 2.0 Planning for Large Employers

JOE ADAMS
PARTNER
jsadams@winston.com

ANDY BANDUCCI
SVP RETIREMENT AND COMPENSATION POLICY, ERIC
abanducci@eric.org

ANNE BECKER
PARTNER
abecker@winston.com

ABBY BROTHERS
ASSOCIATE
abrothers@winston.com

ALYSSA DOWSE
TOTAL REWARDS – RETIREMENT COMPLIANCE, BOEING
alyssa.d.dowse@boeing.com

Today's Topics

- SECURE 2.0: 2023 and Preparing for 2024
- Reviewing the Agenda for Regulators
- Open Questions

SECURE 2.0: 2023 and Preparing for 2024

Overview: SECURE 2.0 Act

- The Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE Act"), enacted on December 20, 2019, made the first set of sweeping changes to retirement plan legislation.
- On December 29, 2022, the SECURE Act of 2022 was signed into law; it contains more than 90 retirement plan provisions, which are generally designed to:
  - Expand retirement plan access and encourage retirement savings
  - Address broader financial challenges that serve as barriers to retirement savings
  - Simplify plan administration, including easing burden of plan corrections

Both Defined Benefit and Defined Contribution Plans

RMD Commencement Date	• The SECURE Act increased the age by which a participant must commence RMDs from age 70-1/2 to age 72 for participants who reach age 72 in 2020 or later. • SECURE 2.0 increases the required commencement age to 73 for participants who reach age 72 in 2023 or later (and to age 75 in 2033). **Note:** • The legally required commencement age will increase but a plan may force-out earlier than the legally required commencement date (after normal retirement age). • Ensure RMD communications and procedures for April 1, 2024 are up-to-date.
Cash-Out Limit Increase	The SECURE 2.0 Act increases the threshold at which consent to a distribution is required from \$5,000 to \$7,000. Thus, amounts \$7,000 and less may be forced out and either paid in a lump sum or rolled over to an IRA.
Inadvertent Overpayments	As of the effective date of SECURE 2.0, fiduciaries have more latitude to decide whether to request return of inadvertent overpayments. If fiduciary opts to collect, limitations apply.

Defined Contribution Plans Only

Matching Student Loan Payments	• SECURE 2.0 permits a plan to match an employee's qualified student loan payments as it would 401(k) contributions. • Matched student loan repayments subject to 402(g) maximum deferral limit.
Self-Certification of Hardship Withdrawals	Rather than producing supporting documentation, participants can self-certify their eligibility for hardship withdrawal, the amount does not exceed the participant's financial need, and the participant has no other alternative for satisfaction of such financial need.
Long Term, Part-time Employee Eligibility	• SECURE Act requires 401(k) plans to expand eligibility requirements to permit participation by long-term, part-time employees (employees with 3 consecutive years with at least 500 hours of service). The first employees to participate under this rule will become eligible as of January 1, 2024. • SECURE 2.0 changes the definition of long-term, part-time employee to an employee working at least 500 hours in two consecutive years, effective January 1, 2025.

Defined Contribution Plans Only

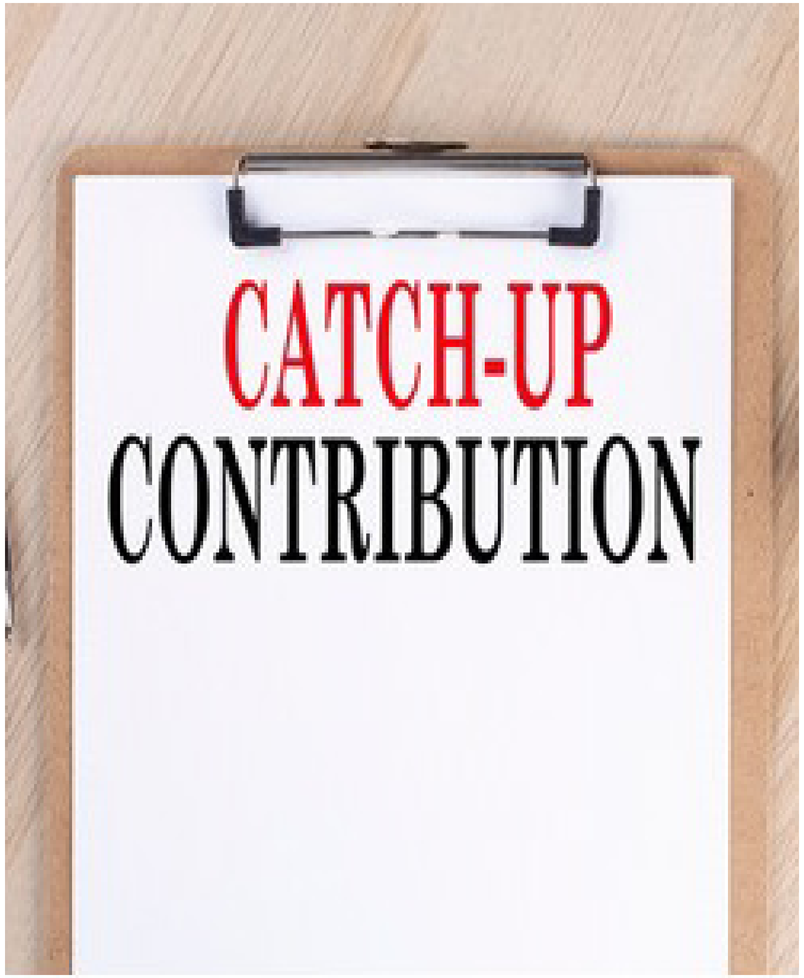
Auto-portability	• Effective December 29, 2023, a new Code prohibited transaction exemption permits the receipt of fees and compensation by an "automatic portability provider".
Employer Contributions as Roth Contributions	• Plans can permit employees to elect to receive employer contributions, such as matching and nonelective contributions, as designated Roth contributions. • Employer contributions may only be designated as Roth contributions if such contributions are nonforfeitable at the time they are received.
Penalty Free Withdrawals and Emergency Savings	• Penalty-free withdrawals for terminal illness, economic loss due to a federally declared disaster occurring on or after January 26, 2021, emergency expenses (up to $1,000), and participants experiencing domestic abuse • Plan savings account up to $2,500 for emergencies – NHCEs only

Reviewing the Agenda for Regulators

May 2023 Technical Corrections Letter

- Minimum Required Distributions issues
- Roth Catch-ups
- Issues related to SEPs and small employer start up credit
- Not exhaustive
- Legislation forthcoming?

SECURE 2.0: Guidance Issued So Far

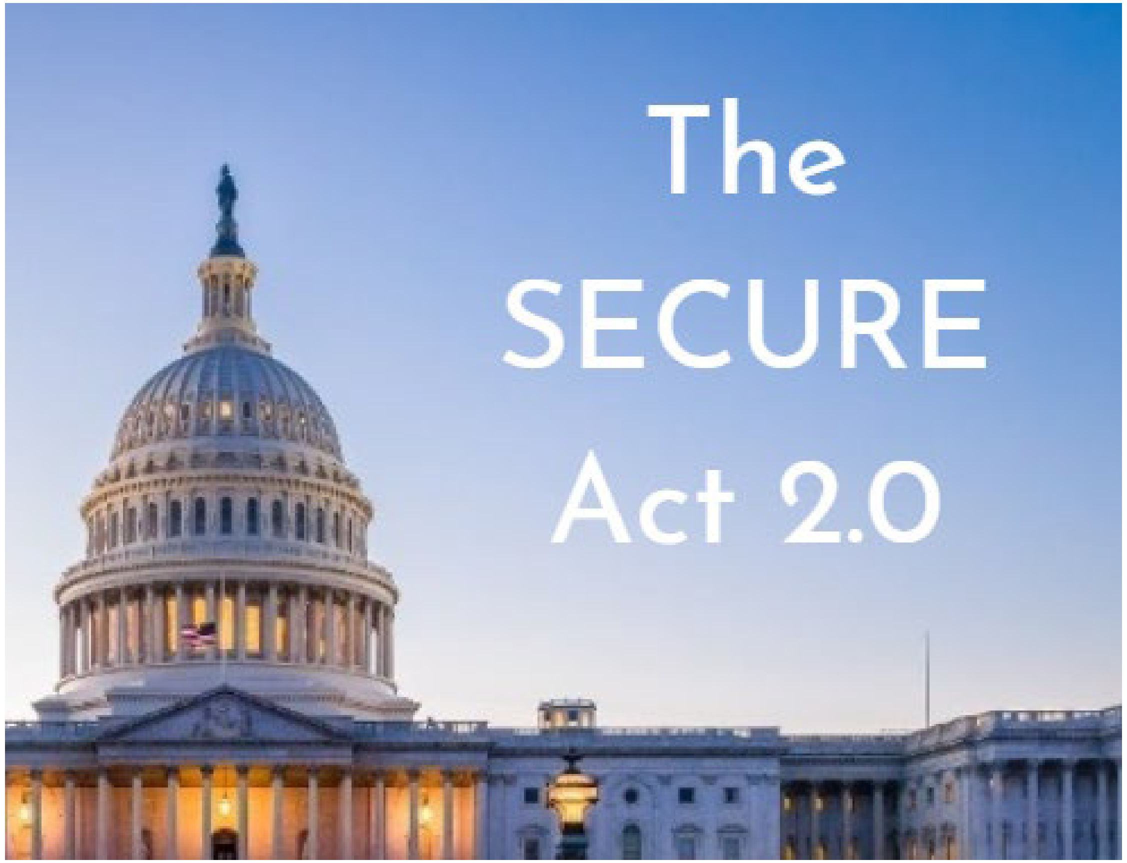


ROTH CATCH-UP CONTRIBUTIONS

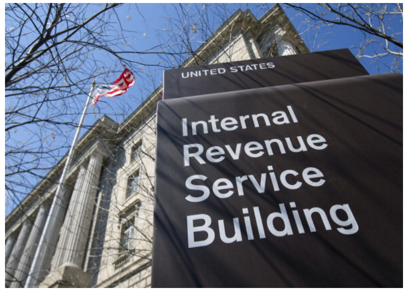
- SECURE 2.0 requires catch-up contributions to be made on a Roth basis if an employee made $145k the previous year
- IRS granted plans two years of "administrative transition" relief to address recordkeeping issues
- More unanswered questions to be addressed, such as whether a plan can exclude high earners from making catch-up contributions

SECURE 2.0: Guidance Issued So Far

- Interim Guidance on Corrections/EPCRS
- Required Minimum Distribution Guidance



IRS Priority Guidance Plan 2023-2024



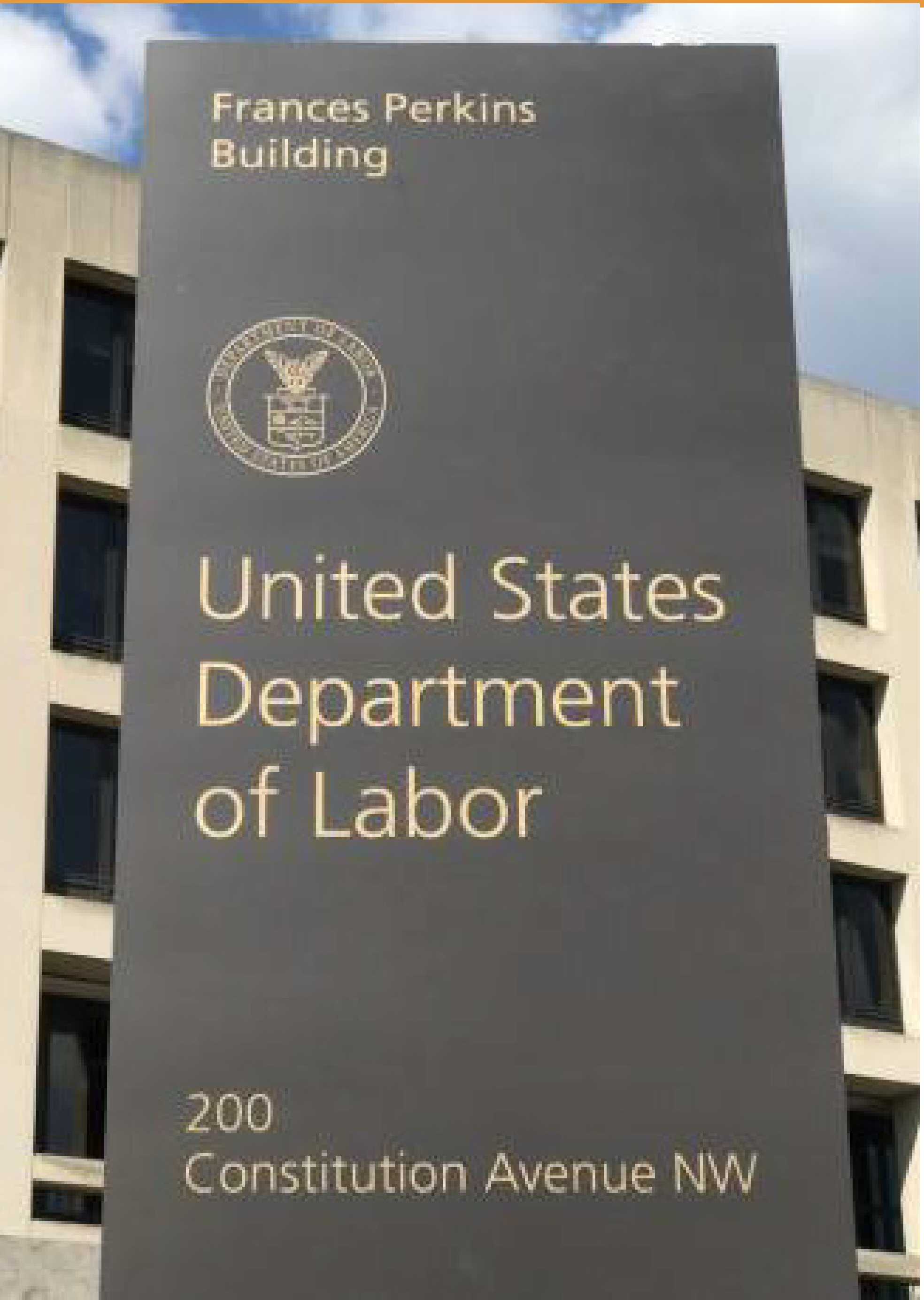
This document contains these tax-related items on which Treasury/IRS will expend resources this year, including

- Guidance relating to certain IRS, Tax Exempt and Government Entities, Employee Plans programs, including the Pre-approved Plan Program, the Determination Letter Program, and the Employee Plans Compliance Resolution System (EPCRS)
- Guidance implementing SECURE 2.0, including guidance providing questions and answers on certain issues
- Final regulations updating electronic delivery rules and other guidance for providing applicable notices and making participant elections
- Final regulations and other guidance relating to modifications to §401(a)(9) made by SECURE and SECURE 2.0
- Guidance on student loan payments and qualified retirement plans and §403(b) plans
- Guidance on missing participants, including guidance on uncashed checks

DOL Regulatory Agenda

“Pre-Rule” Entries for

- Improving Participant Engagement and Effectiveness of ERISA Retirement Plan Disclosures
- Plan Reporting for Retirement Savings Lost and Found
- Emergency Savings
- Exemption for Auto-Portability Transactions
- Pooled Employer Plans
- “Adequate Consideration” regulations (ESOPs)
- Review of Pension Risk Transfer Interpretive Bulletin (IB 95-1)



DOL RFI: SECURE 2.0 Reporting and Disclosure

DOL published an RFI to respond to several topics

- Pooled Employer Plans
- Emergency Savings Accounts Linked to Individual Account Plans
- Performance Benchmarks for Asset Allocation Funds
- Defined Contribution Plan Fee Disclosure Improvements
- Eliminating Unnecessary Plan Requirements Related to Unenrolled Participants
- Requirement to Provide Paper Statements in Certain Cases
- Consolidation of Defined Contribution Plan Notices
- Information Needed for Financial Options Risk Mitigation
- Defined Benefit Annual Funding Notices

Open Questions

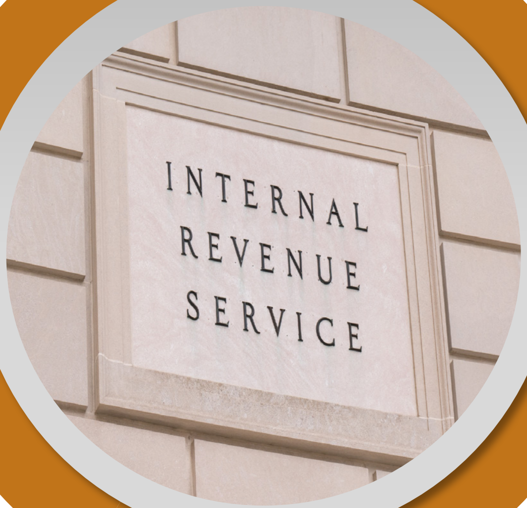
Open Questions

- **Implementation of Roth Catch-Up Contributions** – 2-year administrative transition period of non-enforcement applies until 2026; will IRS guidance:
  - Permit only employees under the $145K threshold to make catch-up contributions?
  - Permit employers to require that all catch-up contributions be made as Roth?
  - Clarify:
    - Default rules, including transition of contribution elections from current law
    - Correction of erroneous pre-tax catch-up contributions (e.g., for employees who exceed $145K threshold)
    - Compliance concerns, including transfers within a controlled group rules and special rules for Puerto Rico participants under dual-qualified plans and mid-year amendments of safe harbor 401(k) plans.

Open Questions

- **Catch-up Contribution Limit Increase for Older Workers**
  - Effective beginning in 2025, increased catch-up limit equal to the greater of $10,000 (indexed) or 150% of the generally applicable catch-up contribution limit will apply for participants ages 60 through 63
  - **Question**: Will the addition of this feature be mandatory or optional?
- **Automatic Enrollment Mandate**
  - Also beginning in 2025, 401(k) and 403(b) plans formed after December 29, 2022, will be required to include automatic enrollment and automatic escalation features
  - **Question**: What plans will be considered to be newly formed for the purposes of applying the mandate?

SECURE 2.0 Overview of Needed Guidance



- “Grab-bag”
- Overpayments
- Automatic Enrollment Mandate
- Emergency Savings
- Student Loan Match
- Disclosure

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TOP ISSUES FOR RETIREMENT PLAN SPONSORS IN 2024

Questions?

A copy of the slides and a recording of today’s presentation will be circulated to attendees within three days.

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