

# SECURE 2.0 Act: Permissive Plan Design Changes

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**PRACTICES** Employee Benefits and Executive Compensation, Retirement Plans

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As we previously reported [here](#), in addition to required changes to retirement plans, the SECURE 2.0 Act provides several permissive plan design enhancements of which plan sponsors may take advantage. The following summary of these plan updates are provided in order of each provision's effective date.

## **Optional Treatment of Employer Matching or Nonelective Contributions as Roth Contributions**

Prior to the enactment of the SECURE 2.0 Act on December 29, 2022 (the "**SECURE 2.0 Enactment Date**"), plan sponsors of 401(k), 403(b), and governmental 457(b) plans were only permitted to provide pre-tax employer matching contributions in such plans. For contributions made after the SECURE 2.0 Enactment Date, plan sponsors may now offer participants the option to elect to receive matching or nonelective contributions on a Roth basis, provided that such Roth contributions are fully vested when contributed.

## **Small Immediate Financial Incentives for Contributing to a Plan**

Before the SECURE 2.0 Act, employers were limited to providing matching contributions as a long-term incentive for employees to contribute to a retirement plan. If an employer offered even a small financial incentive to encourage plan participation (such as a gift card), there was a risk that a prohibited transaction could result. For plan years following the SECURE 2.0 Enactment Date, employers may now offer de minimis financial incentives (not paid for with plan assets) to incentivize participants to make contributions to a 401(k) or 403(b) plan.

## **Updates for Certain Automatic Portability Transactions**

Currently, an employer is permitted to distribute a terminated participant's retirement plan account balance without participant consent if the balance is no more than \$5,000 and is immediately distributable, provided that amounts in excess of \$1,000 are rolled over to a default IRA and not otherwise cashed out. Effective for distributions made after December 31, 2023, the amount that employers may elect to roll over to a default IRA will be increased to \$7,000. Further, for transactions occurring on or after the date which is 12 months after the SECURE 2.0 Enactment Date, plan sponsors may work with service providers to provide their plans with automatic portability services, including the automatic transfer of a participant's default IRA (established in connection with a distribution from a former employer's plan) into the participant's new employer's retirement plan, unless the participant affirmatively elects otherwise. This is a codification of prior DOL guidance permitting the use of such automatic portability services.

## **Emergency Savings Accounts Linked to Individual Account Plans**

For plan years beginning after December 31, 2023, plan sponsors may offer non-highly compensated employees ("**NHCEs**") emergency savings accounts to be invested in a principal preservation investment or interest-bearing account linked to the individual account plan. Such emergency savings accounts must permit withdrawals once per calendar month without assessing withdrawal fees; however, reasonable withdrawal fees may be assessed after the first four withdrawals within the same plan year. Employers may automatically opt NHCEs into these

accounts at no more than 3% of their salary on a Roth-only basis, provided that the portion of an account attributable to the employee's contribution must be capped at \$2,500 (indexed for inflation) or such lower amount as set by the employer. Once the participant contribution cap is reached, the additional contributions can be directed to the employee's Roth account in the employer's defined contribution plan, if available, or stopped until the balance attributable to contributions falls below the cap. Contributions are treated as elective deferrals for purposes of retirement matching contributions. A NHCE enrolled in such an account who thereafter becomes a highly compensated employee, may not make further contributions to such account, but retains the right to withdraw any account balance of such account.

## **Treatment of Student Loan Payments as Elective Deferrals for Purposes of Matching Contributions**

The SECURE 2.0 Act codifies a student loan payment plan design feature that was previously approved by the IRS through a private letter ruling. For contributions made for plan years beginning after December 31, 2023, plan sponsors of 401(k), 403(b), SIMPLE IRA, and governmental 457(b) plans may elect to treat student loan payments as elective deferrals for purposes of eligibility to receive matching contributions. Employers may rely on the employee to certify annually the amount of their qualifying student loan payments. For purposes of the nondiscrimination test applicable to elective contributions (*i.e.*, the Actual Deferral Percentage Test), a plan may test the employees who receive matching contributions on student loan repayments separately.

Plan sponsors have the option to consider adding the above enhancements to their plans. However, before making any changes, plan sponsors should discuss these features further with their service providers to ensure that such provisions are available under and compatible with their retirement plan's platform.