

SECURE 2.0 Act Plan Sponsor Year-End Compliance: Permissive Plan Sponsor Design Changes and Plan Corrections

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PRACTICES Employee Benefits and Executive Compensation

As we previously reported [here](#), the SECURE 2.0 Act was signed into law on December 29, 2022. Although retirement plan amendments made pursuant to the SECURE 2.0 Act are generally not required to be made until on or before the last day of the first plan year beginning on or after January 1, 2025 (2027 in the case of governmental plans), plans must operate in accordance with such amendments as of the effective date of the statutory provisions.

There are several SECURE 2.0 Act provisions that are permissive that will be effective for plan years beginning on or after on January 1, 2024. We have summarized these permissive SECURE 2.0 Act provisions below (other than optional contribution and distribution changes) as well as a safe harbor plan correction provision. Plan sponsors should discuss these provisions with their outside counsel and third party administrators to decide whether they want to implement any of these permissive provisions. Please note that third party administrators and payroll departments may need substantial lead time to implement some of these provisions, so plan sponsors should communicate with them before approving any changes.

- **Treatment of student loan repayments as elective deferrals for purposes of matching contributions:** Plans may, but are not required to, treat student loan repayments as elective deferrals for purposes of determining matching contributions under 401(k), 403(b), or SIMPLE plans
- **Employers allowed to replace SIMPLE retirement accounts with safe harbor 401(k) plans during a plan year:** A plan sponsor may replace a SIMPLE IRA plan with a SIMPLE 401(k) plan or other safe harbor 401(k) plan that requires mandatory employer contributions during a plan year.
- **Exemption for certain automatic portability transactions occurring 12 months after the SECURE 2.0 Enactment Date:** Retirement plan service providers may provide employer 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.
- **Safe harbor for plan corrections of employee elective deferral failures:** The failure to implement an automatic enrollment or automatic escalation feature (including the failure to implement an affirmative employee election under such feature) may be corrected without the requirement to make a qualified nonelective contribution if (i) the correct deferrals are implemented within 9½ months after the end of the plan year in which the failure occurred (or earlier if the employee notified the employer of the failure), (ii) notice is timely provided to the

affected employee, (iii) the employer makes a corrective allocation of missed matching contributions, if any, as adjusted for earnings, and (iv) certain other requirements are satisfied.

For further information on the above provisions and the SECURE 2.0 Act in general, please refer to our prior blog posts linked below.

- [SECURE 2.0 Act Plan Sponsor Year-End Compliance: Participant Contributions and Distributions](#)
- [IRS Issues Relief for Enforcement of Roth Catch-Up Contribution Requirement for Highly Paid Employees Under SECURE 2.0 Act](#)
- [IRS Transition Relief for Required Minimum Distributions Under SECURE 2.0 Act](#)
- [IRS Issues Interim Guidance on Expanded EPCRS](#)
- [SECURE 2.0 Act: Focus on Governmental 457\(b\) Plans](#)
- [SECURE 2.0 Act: Focus on 401\(k\) and 403\(b\) Plans – Changes to Plan Corrections Guidance](#)
- [SECURE 2.0 Act: Focus on 401\(k\) and 403\(b\) Plans – Plan Design Changes](#)
- [SECURE 2.0 Act: Focus on 401\(k\) and 403\(b\) Plans Distribution and Withdrawal Changes](#)
- [SECURE 2.0 Act: Focus on Pension Plans](#)
- [SECURE 2.0 Act: Permissive Plan Design Changes](#)
- [SECURE 2.0 Act Increases Age for Required Minimum Distributions](#)
- [SECURE 2.0 Act: Changes to Plan Corrections Guidance](#)
- [SECURE 2.0 is Here! What's Next for Plan Sponsors?](#)
- [Major Retirement Legislation Passed by Congress: SECURE 2.0 Act](#)