Secure Act 2.0

Webinar

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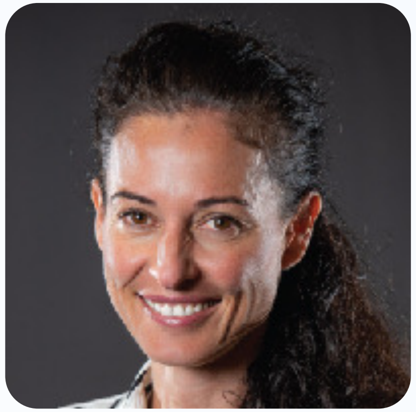

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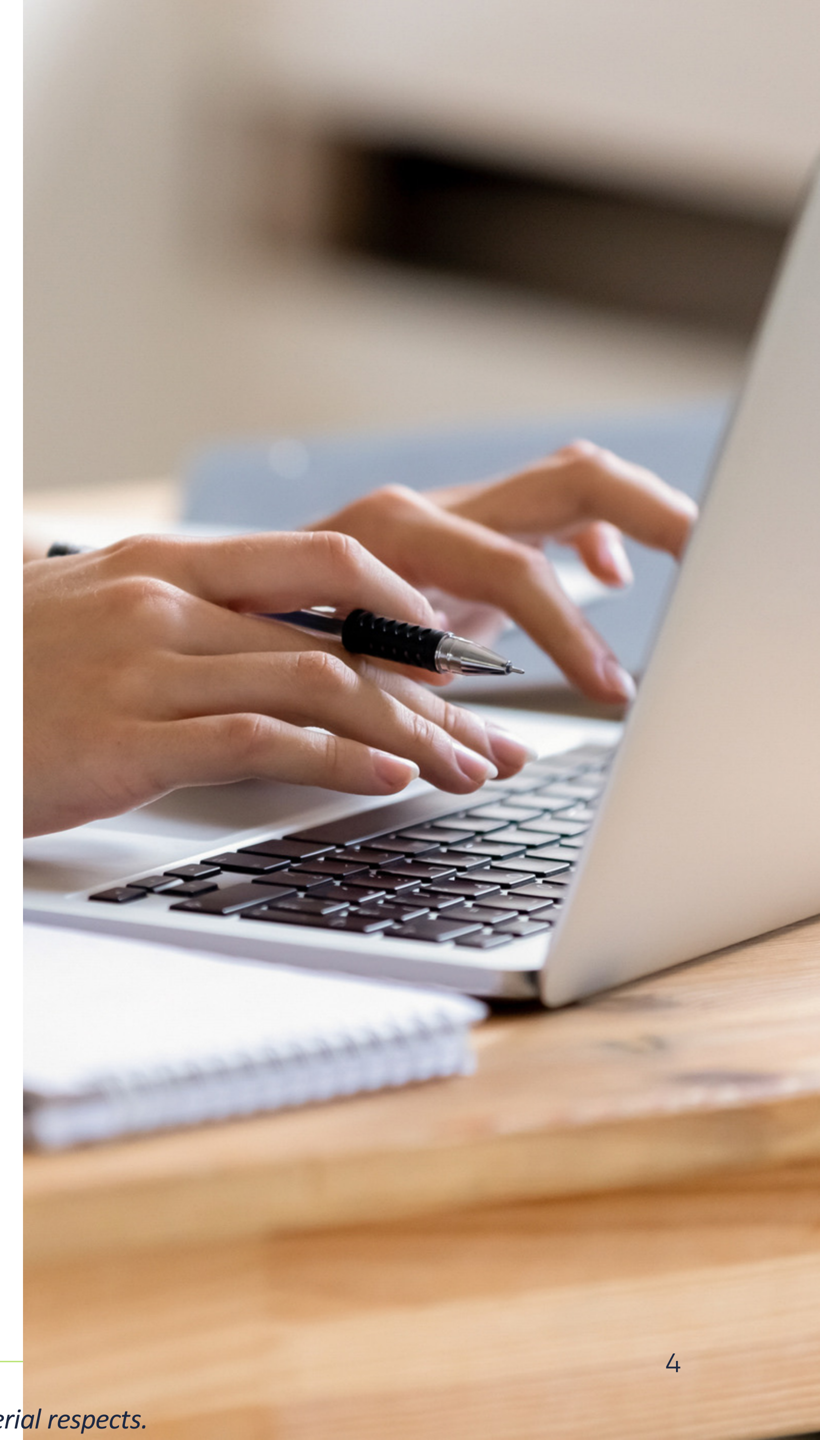
Introduction

- Consolidated Appropriations Act, 2023
    - Passed by Congress on December 23, 2022
    - Signed into law by President Biden on December 29, 2022 (“date of enactment”)
    - Division T – SECURE 2.0 Act of 2022 (“SECURE 2.0”)
- Some mandatory changes, but many changes are optional
- Some changes effective immediately, but also many with delayed effective dates
- Deadline for amending plans is no earlier than the end of the plan year beginning on or after January 1, 2025
    - Same deadlines now also apply for SECURE 1.0, CARES Act, and Taxpayer Certainty and Disaster Tax Relief Act of 2020
    - But plans must be operated in accordance with applicable requirements pending amendment

Agenda

Overview of significant provisions of SECURE Act 2.0

- Roth Contribution and Catch-Up Changes
- Retirement Savings Enhancement Changes
- Distribution Changes
- Participant Disclosures
- Q&A



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Roth Contribution and Catch-Up Changes

Increase in Catch–Up Contribution Limit

- **Background:** Catch-up contributions currently permitted to be made on a pre-tax or Roth basis to an applicable plan by participants who are, or will be, at least age 50 by the end of the calendar year (up to a maximum of $7,500 for 2023) (the "Age 50 Catch-Up Limit")

- **Description:** For eligible participants who are, or will be, age 60, 61, 62, or 63 (but not age 64 or older) by the end of the calendar year, the maximum catch-up contribution limit is increased to the greater of $10,000 or 150% of the "regular" catch-up contribution limit (the "Age 60-63 Catch-Up Limit")

- **Applicability/Effective Date:** Most likely optional for plans that offer catch-up contributions; effective for tax years beginning after 2024 (January 1, 2025)

Increase in Catch-Up Contribution Limit (cont.)

- **Observations:**
  - Accelerated savings rate for older employees and improved retirement readiness
  - Added administrative complexity for plans and recordkeepers to track transitions between the Age 50 Catch-Up Limit and Age 60-63 Catch-Up Limit
  - Targeted communications needed to inform and educate catch-up eligible participants
- **Action Items:**
  - Review current administration of Age 50 Catch-Up Limit
  - Procedural changes
  - System updates
  - Determine communication strategies

Rothification of Catch-Up Contributions

- **Description:** Requires catch-up contributions made by a participant with wages above $145,000 (a "High-Paid Participant") to be made on a Roth (after-tax) basis (rather than on a traditional pre-tax basis)
  - Wages defined under Code section 3121(a)
  - Amount determined during the immediately preceding plan year (e.g., 2024 for catch-up contributions made in 2025)

- **Applicability/Effective Date:** Mandatory for plans that offer catch-up contributions (except SARSEP and SIMPLE-IRA plans); effective for tax years beginning after 2023 (January 1, 2024)

Rothification of Catch-Up Contributions (cont.)

- **Observations:**
  - High-Paid Participants may no longer make pre-tax catch-up contributions
  - Added administrative complexity and plan design implications
  - Guidance needed for catch-up contribution election changes by participants determined to be High-Paid Participants after elections made; also recharacterizations

- **Action Items:**
  - Establish procedures for identifying High-Paid Participants
  - Review current administration of Age 50 Catch-Up Limit
  - Review current procedures for Roth and catch-up contribution elections
  - Communicate changes to participants

Optional Rothification of Fully Vested Employer Matching and Nonelective Contributions

- **Description:** Permits employees to elect that all or a portion of the employer matching or nonelective contributions made to their plan account be treated as Roth contributions (provided that such contributions are fully vested when made to the plan)

- **Applicability/Effective Date:** Optional; can be effective for fully vested contributions made after December 29, 2022. Slavic is currently reviewing the requirements for implementation and administration.

Optional Rothification of Fully Vested Employer Matching and Nonelective Contributions (cont.)

- **Observations:**
  - Expands Rothification currently available under plans offering “in-plan Roth conversion”
  - Plan administration and design implications for plans that contain vesting schedules
  - Guidance needed for applicable reporting forms, procedures, and timing
  - Slavic Pre-Approved plan document allows for in-plan Roth conversions.

- **Action Items:**
  - Evaluate current plan design and need for changes
  - Establish process for soliciting and processing employees’ elections and reporting any Roth-designated matching or nonelective contributions as taxable income
  - Communicate optional Rothification and election procedures to participants

Savings Enhancement Changes

Enhancing Retirement Savings – Required Automatic Enrollment

- **Description:** With a few exceptions, **NEW PLANS** must include an "eligible automatic contribution arrangement" (EACA) that satisfies certain requirements:
  - Automatic enrollment percentage of between 3% and 10%
  - Automatic escalation of 1% every subsequent year up to at least 10% and max of 15%
  - Contributions invested in "qualified default investment alternative" unless participant elects otherwise
  - Participants can opt out
  - Must offer opportunity to withdraw contributions within 90 days of auto-enrollment

- **Applicability:**
  - Mandatory for "new" 401(k) plans established after December 29, 2022
  - Initial participation in a MEP/PEP after December 29, 2022 would be treated as a new plan
  - Employers with plans merging into a MEP/PEP would not be treated as new plans if prior plan adopted prior to January 1, 2023 - More guidance needed.

Enhancing Retirement Savings – Required Automatic Enrollment (cont.)

- **Exceptions:** Required automatic enrollment does not apply to certain plans:
  - Existing plans! (as in existence before December 29, 2022)
  - A plan sponsored by a "new" business for the first three years of existence
  - A plan sponsored by a "small" employer that normally has 10 or fewer employees (exception expires one year after close of tax year in which limit is exceeded)
- **Effective Date:** Effective for plan years beginning after December 31, 2024
- **Observations:**
  - Do not have to wait till January 1, 2025, to add automatic enrollment
  - While existing plan sponsors may not be directly impacted, interesting questions may arise with corporate transactions (e.g., acquiring a company that has a "new plan," spinning off a new plan from an existing plan, etc.)
- **Action Items:**
  - Communication to clients and participants
  - Plan amendments

Enhanced Retirement Plan Savings – Long-Term, Part-Time Employees

SECURE 2.0 makes several significant changes to long-term part-time employee ("LTPT Employee") rules first established in the Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE 1.0")

- **Background:** Under SECURE 1.0:
  - Employees with three or more consecutive years of at least 500 hours of service must be eligible to make elective deferrals to 401(k) plan
  - No requirement to provide employer-matching or non-elective contributions
  - Pre-2021 service excluded for eligibility purposes, but counted for vesting purposes
  - Does not apply to collectively bargained plans
  - January 1, 2024, the earliest a LTPT Employee could be covered under SECURE 1.0

Enhanced Retirement Plan Savings – Long-Term Part-Time Employees (cont.)

- **Description:** SECURE 2.0 changes LTPT Employee rules as follows:
    - Shortens eligibility period from three to two years
    - For purposes of counting years of service:
        - Pre-2023 service not counted for purposes of ERISA plans
        - Pre-2021 service disregarded for vesting (effective as if included in SECURE 1.0)

- **Applicability:** Mandatory for 401(k) and 403(b) plans

- **Effective Date:** Effective for plan years beginning after December 31, 2024

- **Observations:**
    - LTPT Employees satisfying SECURE 1.0 requirements still eligible to participate as early as January 1, 2024; January 1, 2025, earliest participation under SECURE 2.0 rules

Matching Contributions on Student Loan Payments (cont.)

- **Background:** Technical 401(k) plan rules complicate the ability to match student loan repayments. An existing IRS ruling position permits "non-elective" contributions, but not true matching contributions and administrative complications remain.

- **Description:** Employers may now match employee student loan repayments:
    - Permits employers to treat "qualified student loan payments" for "qualified higher education expenses" as elective deferrals and corresponding plan contributions as true matching contributions
    - Subject to certain requirements (e.g., payments subject to elective deferral limit, all matching eligible employees must be eligible for program, same rate as for other elective deferrals, etc.)
    - Employers can rely on employees' certification of qualified student loan repayments. Employees receiving student loan repayment matching contributions can be tested separately

Matching Contributions on Student Loan Payments (cont.)

- **Applicability:** Optional for 401(k), 403(b), governmental 457(b) and SIMPLE IRAs
- **Effective Date:** Effective for plan years beginning after December 31, 2023
- **Observations:** Potentially valuable plan feature for some employers and employees, but employers will need to consider the potential impact on plan design and operation

Emergency Savings Accounts (ESAs)

- **Description**: In-plan emergency savings feature would permit employees to make contributions to a savings account within a defined contribution plan that satisfies the following requirements:
    - Only available to employees who are "non-highly compensated employees" (e.g., $150,000 in 2023)
    - Contributions must be made as Roth after-tax contributions
    - ESA contributions balance capped at $2,500 (adjusted for inflation)
    - Balances must be eligible for distribution at least once a month
    - ESA contributions must be invested in a capital preservation investment option
    - Employee contributions to an ESA must be eligible for matching contributions at the same matching rate as elective deferrals (but matching contributions are made to the general plan, not to the ESA)
- **Applicability:** Optional for 401(k) plans
- **Effective Date:** Effect for plan years beginning after December 31, 2023
- **Observation:** Potentially valuable feature for some participants, but plan sponsors will need to consider the administrative burdens and complexities of offering it

Enhanced Retirement Plan Savings – Saver's Match

- **Description:** Replaces existing saver's tax "credit" with a saver's "match" on qualified retirement savings contributions of up to $2,000 that satisfies the following:
    - Matching percentage is 50%, but subject to income phaseout (e.g., $41,000-$70,000 phaseout range for joint filers)
    - Matching contribution paid by Treasury as a pre-tax contribution to any traditional IRA or retirement plan (401(k), 403(b), or 457(b))
    - Contribution is fully vested, subject to distribution limits, excluded from testing, and does not count against applicable contribution limits
- **Applicability:** Optional; only applies to IRAs or plans **that accept the contributions**
- **Effective Date:** Effective for tax years beginning after December 31, 2026
- **Observation:** Potentially significant administrative issues associated with accepting and recordkeeping saver's match may discourage retirement plan sponsors from accepting such contributions

Startup Costs Tax Credit – Clarification

- **Description:** SECURE 2.0 amends Code Section 45E to clarify that employers become eligible for the small employer pension plan startup tax credit based on the year in which they join a MEP or PEP as a participating employer
    - Code Section 45E provides that employers with fewer than 100 employees that adopt a new retirement plan may qualify for an annual tax credit for up to three years equal to the lesser of (1) 50% of the administrative cost of establishing the plan and (2) $5,000
    - Previously, one could read the credit to apply based on when the MEP or PEP came into existence, not when the employer began participating in the MEP or PEP

- **Effective Date:** Retroactive to the effective date of SECURE 1.0

Startup Costs Tax Credit – Enhancements

- **Description:** For employers with 50 or fewer employees, the credit described on the previous slide is increased to 100% of the administrative cost of establishing the plan up to $5,000

- **Description:** A generous new tax credit is available to cover some or all of the contributions made by small employers to a newly established retirement plan (other than a defined benefit plan), subject to certain limitations and phase-outs

- **Effective Date:** Effective for tax years beginning after December 31, 2022

Distribution Changes

Enhancing Retirement Distributions – Self-Certification for Hardship Distributions

- **Description:** Except when the plan administrator "has actual knowledge to the contrary," a plan administrator may rely on an employee's written certification that a hardship distribution:
  - is for an immediate and heavy financial need;
  - does not exceed the amount required to satisfy the financial need; and
  - the employee has no alternative means reasonably available to satisfy the need.

- **Applicability/Effective Date:**
  - Optional for 401(k) plans for plan years beginning after December 29, 2022

- **Observation:**
  - Treasury can provide regulations addressing the exception based on plan administrator knowledge

Enhancing Retirement Distributions – Increased Required Minimum Distribution Age

- **Description:** Required minimum distribution (RMD) age increased:
    - from age 72 to age 73 for distribution beginning January 1, 2023
    - applies to participants who turned age 72 after December 31, 2022
    - from age 73 to age 75 beginning January 1, 2033
    - applies to participants who turn 74 after December 31, 2032
- **Applicability/Effective Date:** Optional/mandatory for all retirement plans and traditional IRAs for employees who reach age 72 after December 31, 2022
- **Observations:**
    - Individuals who reached age 72 in 2022 still have required beginning date in 2023
    - Mandatory for determining eligible rollover distribution and excise taxes
    - Technical correction will be required for a participant who is born in 1959 (will turn 73 before January 1, 2033, and 74 after December 31, 2032)

Enhancing Retirement Distributions – Cash Out Limit Increase

- **Description:** The maximum amount that can be automatically cashed out is increased from $5,000 to $7,000
  - Amounts more than $1,000 but not exceeding $7,000 must be rolled over to an IRA unless the participant elects otherwise

- **Applicability/Effective Date:** Optional for all retirement plans for distributions after December 31, 2023

- **Observation:**
  - Requires revisions to recordkeeping systems, IRA rollover vendor agreements (don't forget to address cybersecurity and privacy), and participant communications

Enhancing Retirement Distributions – Emergency Personal Expense Withdrawals

- **Description:** Plans can permit one withdrawal per year of up to $1,000 for an unforeseeable and immediate financial need relating to necessary personal or family expense
  - May rely on individual's written self-certification unless actual knowledge to the contrary
  - Not subject to 10% early distribution penalty
  - Can be repaid within three years
  - Additional distributions with the three years dependent on repayment

- **Applicability/Effective Date:** Optional for all retirement plans for distributions after December 31, 2023

- **Observation:**
  - Distribution right different from self-certification of hardship and emergency savings account withdrawals

Enhancing Retirement Distributions – Other Withdrawal Provisions

- **Penalty-Free Withdrawal from Retirement Plans for Cases of Domestic Abuse**
  - Lesser of $10,000 or 50%
  - Optional and effective for distributions after December 31, 2023

- **Penalty-Free Distribution to Participant Who Is Terminally Ill**
  - Requires certification from physician and allowed to be repaid (generally three years)
  - Optional and effective for distributions after December 29, 2022

- **Clarification of Qualified Birth or Adoption Distribution (QBAD) Repayment:**
  - Clarifies that repayment period following QBAD is three years
  - Optional and effective for distributions after December 29, 2022 (special rule for prior distributions)

Enhancing Retirement Distributions – Automatic Portability

- **Description:** Amounts transferred from a defined contribution plan to a default IRA for the benefit of an individual may be automatically transferred into the retirement plan of the individual's new employer
  - Individual must:
    - be an active participant in the new employer's plan
    - be given notice and an opportunity to elect to not have the amount automatically rolled over
  - Providers must satisfy certain conditions (e.g., acknowledgment of fiduciary status)
- **Applicability/Effective Date:** Optional for all retirement plans beginning December 29, 2023 (one year after SECURE 2.0 enactment)
  - DOL must issue implementing guidance within one year
- **Observation:**
  - Requires plan amendments and agreements with providers and participant communications

Enhancing Retirement Distributions – Retirement Savings Lost and Found

- **Description:** DOL directed to establish a national online "lost and found" database
  - Intended to allow individuals to locate plan administrators and contact information for plans with respect to which the individual was a participant or beneficiary, in order for the individual to be able to make a claim for benefits
  - DOL must ensure security of personal and plan data and allow individuals to opt-out
  - Plan administrators will be required to provide DOL with information on current and former participants (in accordance with to-be-issued DOL regulations)
  - DOL must establish database by December 29, 2024 (two years from date of enactment)

- **Applicability/Effective Date:** Mandatory (plans provide data for plan years beginning after December 31, 2023

- **Observation:**
  - Privacy protections implemented by the DOL may inform data security standards for recordkeepers and other service providers

Participant Disclosures

Simplified Disclosures for Unenrolled DC Plan Participants

- **Background:** Under current rules, employees who choose not to participate in an employer-sponsored plan ("unenrolled participants") are required to receive numerous communications from the plan sponsor.

- **Description:** Eliminates need to provide notices and disclosures (IRS or DOL) to unenrolled participants, other than:
  - Annual reminder notice. Notifies participant of:
    - Eligibility to participate
    - Key benefits and rights under plan (focus on employer contributions and vesting)
  - Documents unenrolled participant requests

- **Observations:**
  - Requires changes to current process
  - Maintain two employee lists

Requirement to Provide Paper Statement

- **Description:** 401(k) plans must deliver at least one paper benefit statement per year, unless a participant has affirmatively requested electronic delivery.
    - For participants who enter after 2025, electronic benefit statements available only if participant receives one-time paper notice of right to request paper delivery
    - DOL to update regulations before 2025

SECURE Act 2.0 Resources

Information, including our newsletters and webinar presentations can be found on our website:

Support Center > Insights & Guides > Category: Compliance

https://slavic401k.com/resources_category/compliance

Q & A

Thank You!