SPECIAL CLIENT WEBINAR

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Introductions

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Agenda

- 2023 Secure 2.0 Act Provisions Overview
- Recap
- Plan Amendments
- Sneak Peek at 2024 Secure 2.0 Provisions
- Key Takeaways

Abbreviations in Presentation

- DB – Defined Benefit Plan
- DC – Defined Contribution Plans including MPP, PSP, ESOP, other
- DOL – Department of Labor
- EPCRS – Employee Plans Compliance Resolution System
- ESOP – Employee Stock Ownership Plan
- Gov't – Governmental
- MEP – Multiple Employer Plan
- MPP – Money Purchase Pension Plan
- PEP – Pooled Employer Plan
- PSP – Profit Sharing Plan
- RMD – Required Minimum Distribution

Secure 2.0 Act 2023 Provisions

RETIREMENT ACCOUNT PROVISIONS

SIGNED DECEMBER 29, 2022

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Secure 2.0 Overview

Options Include:

- 92 retirement provisions
  - 45 provisions effective in 2023 and retroactive
  - 24 provisions effective in 2024
  - 23 provisions effective in 2025 +

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Secure 2.0 Act

- Title 1: Expanding Coverage and Increasing Retirement Savings
- Title 2: Preservation of Income
- Title 3: Simplification and Clarification of Retirement Plan Rules
- Title 4: Technical Amendments (to 2020 Secure 1.0)
- Title 5: Administrative Provisions (plan amendment deadlines)
- Title 6: Revenue Provisions
- Title 7: Tax Court Retirement Provisions

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Required Minimum Distributions (RMD) at Age 73

- Participants who retire & meet certain age requirements (& more than 5% owners) must take required minimum distributions (RMD)
  - Required beginning date is April 1 of calendar year following age 70 1/2
- Secure 1.0 increased the RMD age to 72
- Secure 2.0 - effective on January 1, 2023, age increases to 73 for participants who turn age 72 after 12/31/2022
- Effective on January 1, 2033, the age increases to 75 for participants who turn age 74 after 12/31/2032

Effective Date	RMDs after 12/31/2022
Plan(s)	401(K), 403(b), 457(b), DC, DB
Required?	Yes

Required Minimum Distributions (RMD) Age Changes

Participant Birthdate	RMD Age
Born before 7/1/1949	70 ½
Born 7/1/1949 – 12/31/1950	72
Born 1/1/1951 – 12/31/1959*	73
After 12/31/1958*	75

***** *Law is written incorrectly. Congress needs to fix the RMD age for those born in 1959*

Reduction of Excise Tax For RMD Failures

- Prior law – participants who take late required minimum distributions must pay a 50% excise tax on missed amount
- Secure 2.0 decreased excise tax to:
  - 25%; or
  - 10% if RMD is taken and participant files a return and pays taxes on RMD during correction window
- Correction window ends 2 years after RMD should have been taken, or sooner if IRS issues a deficiency notice

Effective Date	1/1/2023
Plan(s)	401(K), 403(b), 457(b), DC, DB
Required?	No

Hardship Distribution Employee Self-Certification

- Hardship distributions may be allowed in plans
- Most plans allow the following "safe harbor" reasons to be eligible for a hardship distribution
  - Medical expenses
  - Purchase of a primary residence
  - Tuition for post-secondary education
  - Prevention of eviction from primary residence
  - Funeral or burial expenses
  - Certain repairs to primary residence that qualifies for casualty deduction
  - Expenses and losses due to disaster declared by FEMA
- 457(b) Governmental Plans – unforeseeable emergencies

Effective Date	Plan years after 12/29/2022
Plan(s)	401(k), 403(b), Gov't 457(b)
Required?	No

Hardship Distribution Employee Self-Certification

- Current practice for many plan sponsors is to substantiate all expenses prior to allowing the hardship distribution
- Secure 2.0 - plan sponsors rely on employee's certification that:
  - Distribution is on account of a deemed immediate and heavy financial need under safe harbor regulations, (or unforeseeable emergency for 457(b));
  - Distribution doesn't exceed the amount of need;
  - Employee doesn't have other resources
- Employers can satisfy fiduciary responsibilities
- IRS can issue regulations addressing
  - When employer has contrary knowledge
  - Cases of employee misrepresentation

Qualified Birth & Adoption Distributions (QBADs) Secure 1.0

Participants may withdraw up to $5,000 for "qualified" births and adoptions and be exempt from pre-59½ 10% federal penalty

An amount not to exceed $5,000 paid during the one-year period following the date on which:

- a child of the individual is born, or
- the legal adoption by the individual of an eligible adoptee is finalized

Eligible adoptee is a child who is:

- Under the age of 18, or
- Physically or mentally incapable of self-support
- Not the child of the individual's spouse – the adoption by a step-parent of a spouse's child is not exempt from the penalty

Effective Date	January 1, 2020
Plan(s)	401(k), 403(b), Gov't 457(b), DC
Required?	No

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Qualified Birth or Adoption Distribution Secure 1.0

Withdrawal can come from any account, including elective deferral accounts that are typically restricted under the age of 59½

Withdrawal is not subject to withholding (20%) – not an eligible rollover distribution

- Participant must pay ordinary income taxes on this amount when they file their tax return

Participant may repay the QBAD after the distribution occurred

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Repayment of Qualified Birth & Adoption Distributions (QBADs) – Secure 2.0

Secure 1.0 didn't impose a repayment time limit for QBADs

If an employee repays a QBAD back to the plan, it must be repaid within 3 years

For QBADs taken on or after December 29, 2022 - deadline is 3 years from distribution date

For QBADs taken before December 29, 2022, the deadline to repay is December 31, 2025

Effective Date	QBADs after 12/29/2022
Plan(s)	401(k), 403(b), Gov't 457(b), DC
Required?	Yes, if QBADs are allowed in plan

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Distributions to Terminally Ill Exempt From 10% Federal Early Tax Penalty

- 10% early tax penalty does not apply to distributions to terminally ill individual
- Doctor must certify that employee has terminal illness that is reasonably expected to result in death within 7 years
- Participant must be eligible to take a distribution, e.g., in-service distribution or separation from service
  - Error in the law that must be fixed
- Participant may repay within 3 years of distribution
- Employers should request documentation, e.g. Physician's certification
  - Self-certification is not allowed for this provision

Effective Date	Distributions after 12/29/2022
Plan(s)	401(k), 403(b), 457(b), DC, DB
Required?	No

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Permanent Relief for Federally-Declared Disasters

- Previously, Congress had to pass legislation for each disaster to allow participants to withdrawal funds from retirement plans
- Secure 2.0 makes permanent disaster relief for:
  - Distributions
  - Loans
- Participant's residence must be in a qualified disaster area and they must suffer an economic loss (self-certification?)
- Federally declared disaster areas and incident dates are found at fema.org

Effective Date	Disasters after 12/25/2021
Plan(s)	401(k), 403(b),Gov't 457(b), DC, DB
Required?	No

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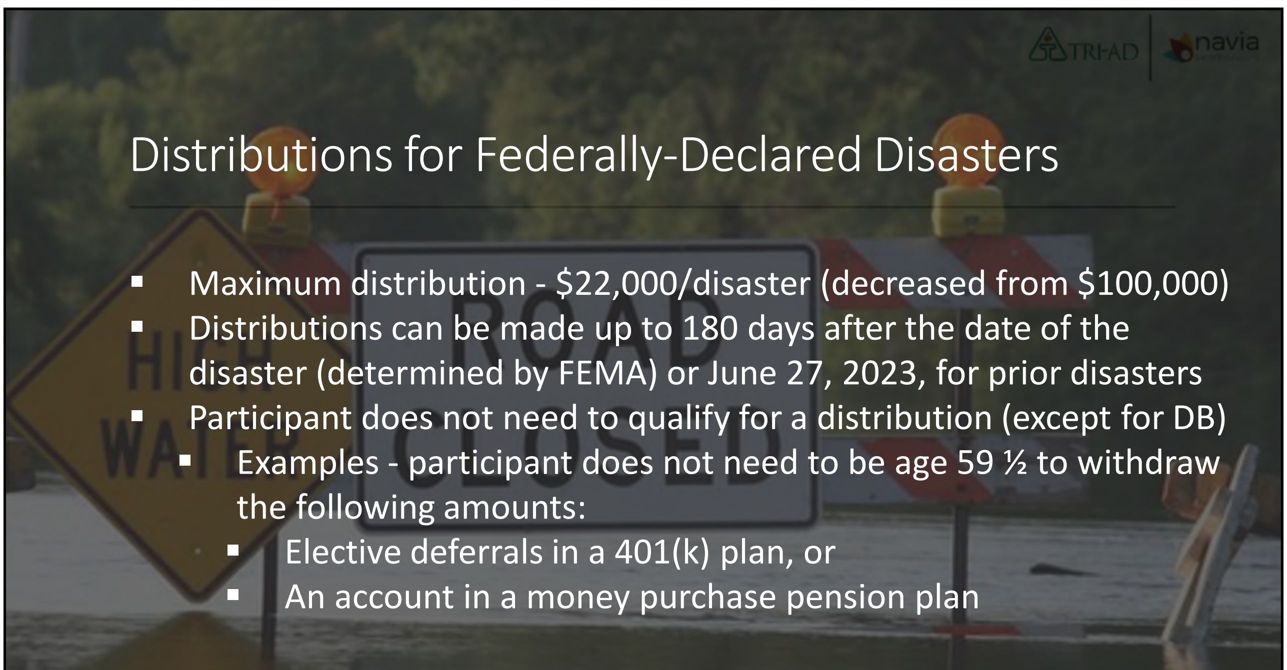

Distributions for Federally-Declared Disasters

- Maximum distribution - $22,000/disaster (decreased from $100,000)
- Distributions can be made up to 180 days after the date of the disaster (determined by FEMA) or June 27, 2023, for prior disasters
- Participant does not need to qualify for a distribution (except for DB)
  - Examples - participant does not need to be age 59 ½ to withdraw the following amounts:
    - Elective deferrals in a 401(k) plan, or
    - An account in a money purchase pension plan

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Distributions for Federally-Declared Disasters

- Participant must pay ordinary income taxes on distribution
- 10% early tax penalty does not apply to distributions for disasters
- 20% federal tax withholding does not apply when distribution occurs from plan
    - Participant can elect 10% federal tax withholding, but not required
- Distribution can be spread over 3 years for taxation purposes
  - Example - $20,000 distribution taken in 2023
    - 2023 taxable amount - $6,666.67
    - 2024 taxable amount - $6,666.67
    - 2025 taxable amount - $6,666.67
- Participant can repay the distribution within 3 years
- Disaster distributions are different than hardship

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Loans for Federally Declared Disasters

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- Loan limit is doubled from normal limit
- Limit is the lesser of:
  - 100% of the vested account balance/accrued benefit (normally 50%); or
  - $100,000 (normally $50,000)
- Loans can be made generally up to 180 days after the date of the disaster (determined by FEMA) or June 27, 2023, for prior disasters
- Loan payments may be delayed up to 1 year

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Distributions to Firefighters in Private Sector

- 10% early tax penalty doesn't apply to distributions after separation from service after attaining age 55
- Governmental plans exempt distributions to public safety officers after separation of service at age 50

Distributions to Firefighters in Private Sector

- Secure 2.0 changes the following:
  - Non-governmental plans
    - Exempts firefighters from 10% penalty after separation from service after the earlier of:
      - attaining age 50; or
      - 25 years of service
  - Governmental plans
    - Exempts public safety employee from 10% penalty after separation from service after the earlier of:
      - attaining age 50; or
      - 25 years of service
    - Expands exemption to corrections officers and forensic security employees

Effective Date	Distributions after 12/29/2022
Plan(s)	401(k), 403(b), Gov't 457(b), DC, DB
Required?	No

Distributions to Firefighters in Private Sector

- Firefighter definition – “employee who provides firefighting”
- Until further guidance, employers may want to limit this to only those who fight fires, not administrative staff
- IRS may provide further guidance on this definition

Employer Contributions - Roth Contributions

- **Employees may elect to designate employer contributions as Roth contributions**
- **Which contributions?**
  - **Matching contributions**
  - **Nonelective contributions, e.g. profit sharing contributions**
- **How will this work?**
  - **The employer contributions may be taxed via payroll and deposited into the retirement plan as Roth**
  - **Employer deposits contribution as normal and recordkeeper deposits into Roth account and issues 1099R**
- **May apply to money purchase pension or profit sharing plans (need additional guidance)**

Effective Date	Contributions made after 12/29/2022
Plan(s)	401(k), 403(b), Gov’t 457(b), DC?
Required?	No

Employer Contributions - Roth Contributions

- Amount contributed to the Roth account must be 100% vested (nonforfeitable)
  - Participant cannot elect Roth on non-vested employer contributions
  - Unclear whether participant must be 100% vested in order to elect Roth employer contributions
  - Recordkeeping gets complicated if not
    - Must set up 2 Roth employer contribution accounts, one that is fully vested and one that is 0% vested

Employer Contributions - Roth Contributions

- How do employees elect?
  - Service Provider - current service provider recordkeeping systems are not set up to allow this type of election so re-programming must occur
  - Employers – do they administer the election?
    - Administrative nightmare for employers to administer since employees may change their elections at any time, e.g., per pay period matching contributions

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Employer Contributions as Roth Contributions

- Should employers implement now?
- Many questions on how to administer
- Suggest waiting for IRS guidance and software programming changes
- 401(k) and 403(b) plans may allow for in-plan transfers of pre-tax accounts to Roth accounts
  - Matching contributions and nonelective contributions can be transferred at the election of the participant

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Eliminates Notices to Unenrolled Participants

Effective Date	Plan years beginning after 12/31/2022
Plan(s)	401(k), 403(b), DC
Required?	No

- Employers do not need to provide required IRS or DOL notices to unenrolled participants other than:
  - Annual reminder notice of participant's eligibility to participate in the plan and election deadlines
  - Any documents requested by the unenrolled participant

Eliminates Notices to Unenrolled Participants

- An unenrolled participant is an employee who is:
  - Eligible to participate in an individual account plan
  - Not participating in the plan
    - If the employee is eligible for a contribution where they don't have to elect, they are not an "unenrolled participant", e.g., nonelective employer contributions, safe harbor or profit-sharing contributions
  - Has been furnished the Summary Plan Description (SPD) and other notices related to eligibility under the plan
  - Satisfies notice criteria determined by the IRS/DOL

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Eliminates Notices to Unenrolled Participants

- Notices you don't have to send are:
  - Fee and investment disclosures
  - Benefits statements
  - Summary annual reports
  - Qualified Default Investment Alternative
  - Eligible Automatic Contribution Arrangement (EACA)
  - Safe harbor
- Must provide Summary Plan Description and Material Modifications
- Plan sponsors should check with service provider to determine if or when this provision can be implemented (not required)
  - Requires 2 different participant lists

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Expansion of IRS Voluntary Correction Program

- Expands Employee Plans Compliance Resolution System (EPCRS)
  - Allow self-correction of inadvertent failures regardless of when they occurred
  - Expands loan corrections
  - Allow for inadvertent failures under IRAs

Effective Date	Now or when IRS updates EPCRS?
Plan(s)	401(k), 403(b), DC, DB
Required?	No

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Expansion of IRS Voluntary Correction Program

- No time limit to self-correct inadvertent failure unless:
  - IRS catches prior to any actions the employer takes to fix the failure
  - Self-correction is not completed within a reasonable period (not defined) after the failure is identified
- Relief is not available for
  - Egregious failures
  - Failures that relate to diversion or misuse of assets
  - Failures directly or indirectly related to abusive tax avoidance transactions

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Expansion of IRS Voluntary Correction Program

- IRS directed to update Rev Proc 2021-30 (EPCRS rules) no later than 12/29/2024
- No effective date in the law – do we have to wait to implement these new rules until IRS updates EPCRS?
  - Most conservative approach is to wait for EPCRS to be updated

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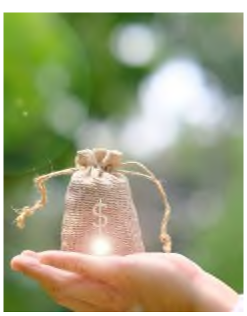
Inadvertent Overpayments from Retirement Plan



Effective Date	December 29, 2022
Plan(s)	401(K), 403(b), DC, DB
Required?	Mostly optional

- Paying a participant too much out of a retirement plan, e.g., vesting was incorrect and participant paid out too much
- Secure 2.0 provides liability protection for fiduciaries who do not seek repayment of the overpayment
  - Includes not seeking overpayment from participant or restoration from the plan sponsor

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Inadvertent Overpayments from Retirement Plan

- Plan sponsor can amend plan to adjust for overpayments by:
  - increasing past benefits that entitles the higher payments to the participant; or
  - decreasing future payments
- Overpayment cannot create excess contribution, benefit and compensation limits
- Doesn't relieve employer of funding obligations

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Inadvertent Overpayments from Retirement Plan

- If overpayment was rolled over:
  - Fiduciary does not need to recoup
  - If fiduciary seeks recoupment, participant can roll money back into plan without tax
- If seeking recoupment, fiduciary may not:
  - Recover interest or fees, e.g., collection fees
  - Reduce future annuitized payments in excess of certain limits
  - Recover overpayments from spouse or beneficiary
  - Recoup payments after 3 years after notice was provided to participant or beneficiary, unless fraud is involved

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Small Financial Incentives to Participate

- The law currently forbids employers from conditioning bonuses or other benefits on whether employees defer into the plan (other than a match)
- Secure 2.0 allows de minimis financial incentives
  - Example – gift card
  - De minimis is not defined
- Cannot be paid for out of plan assets
- Tool for employers with low participation rates

Effective Date	Plan years beginning after 12/29/2022
Plan(s)	401(k), 403(b)
Required?	No

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Roth Contributions in SEPs and SIMPLE IRAs

The law currently does not allow Roth contributions to these types of plans

Secure 2.0 allows Roth employer and employee contributions

Employee election required

Effective Date	Tax years after 2022
Plan(s)	SEP, SIMPLE IRA
Required?	No

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Retirement Plan Start-Up Credit – Admin Fees

- Law allows a 50% tax credit for plan startup costs for up to 3 years for small employers (no more than 100 employees)
- Secure 2.0 increases tax credit up to 100% of startup costs for 3 years for small employers (no more than 50 employees)
- Same limit applies, greater of $500 minimum; or

  Lesser of $250 per eligible non-highly compensated employee or $5,000
- Costs to establish and administer plan or employee education
- If employer joins multiple employer plan, credit is available for up to 3 years after joining
- Must have one non-highly compensated employee in the plan

Effective Date	Tax years beginning after 2022
Plan(s)	401(k), DC, DB
Required?	No

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Retirement Plan Start-Up Credit
Employer Contributions

Effective Date	Tax years beginning after 2022
Plan(s)	401(k), DC
Required?	No

- Increased credit for employer contributions to the plan
- Applies to small employers
  - Full credit applies to employers with less than 50 employees
  - Phase out of credit applies to employers with 51 – 100 employees
- Maximum employer contribution amount is $1,000 for each eligible employee who is paid $100,000 or less in the taxable year
- The credit phases out over time
  - Year 1 – 100% credit
  - Year 2 – 100% credit
  - Year 3 – 75% credit
  - Year 4 - 50% credit
  - Year 5 – 25% credit
  - Year 6 or later – 0% credit
- If the employer takes the credit, a deduction is not allowed

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Tribal Qualified Domestic Relations Orders (QDRO)

- QDROs allow distributions to ex-spouse for divorce
- QDROs may be issued by Tribal courts

Effective Date	Orders received after 2022
Plan(s)	401(k), 403(b), 457(b), DC, DB
Required?	No

Other 2023 Secure 2.0 Act Provisions

Defined Benefit Plans

- Cash balance plan with variable interest crediting rate can use reasonable projected rate not above 6% for backloading protection rules
- Eliminates PBGC variable rate premium and replaces it with flat $52 per $1,000 of unfunded vested benefit with no further cost of living indexing
- Overfunded plan assets can provide retiree health benefits; extends sunset from 2025 to 2032

Effective Date	Plan years beginning after 12/29/2022
Plan(s)	DB
Required?	Yes, except bullet 3

Other 2023 Secure 2.0 Act Provisions: IRA Changes

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- Indexes $100,000 limit on qualified charitable distributions
  Allows one-time $50,000 qualified charitable distribution to charitable remainder trust or charitable gift trust
- If IRA involved in prohibited transaction, doesn't impact other IRAs the owner holds
- Statute of limitations on excise taxes is extended to 6 years for excess IRA contributions
- No 10% penalty on earnings on corrective distributions for excess contributions

Effective Date	2023
Plan(s)	IRA
Required?	No

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Other 2023 Secure 2.0 Act Provisions

- Retroactive elective deferral elections (401(k)) for unincorporated sole proprietors up to date of 2023 tax return, plus extensions
  - Doesn't apply to partners in a partnership or anyone with employees
  - Doesn't apply to 2022 plan years
- Tax credit up to $500 for military spouse coverage for small employers (100 employees or less)
  - Must be immediately eligible and 100% vested in employer contributions
- Plans that are a Qualified Automatic Contribution Arrangement (QACA) with ACP safe harbor must provide safe harbor notices

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Other 2023 Secure 2.0 Act Provisions

Change in calculating RMDs if part of a defined contribution plan account is an annuity

Pooled Employer Plans (PEP) must designate named fiduciary (not participating employer) to collect employer contributions; old rule had trustee instead

New law allows 403(b) plans to be designed as multiple employer plans (does not apply to a church plan)

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Other 2023 Secure 2.0 Act Provisions

- 5500 Audit requirements for a Group of Plans is determined on an individual employer basis
- Eliminates DB §415 100% of comp limit for rural electric cooperative plans
- Governmental 457(b) – eliminates requirement that elective deferrals must be made or changed before the first day of the month to which they apply, now election immediately effective

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Other 2023 Secure 2.0 Act Provisions

- Governmental retirement plans – tax free distributions up to $3,000 per year from retirement plan to public safety officers to pay for health or long-term care insurance can now be paid directly to individual to remit to insurance company
- SEPs for domestic workers - permits employers of domestic employees (e.g., nannies) to provide retirement benefits for such employees under a SEP
- Increases limit on premiums for qualified longevity annuity contracts (QLACs)

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Recap of 2023 Provisions - 1

Secure 2.0 Act Provision	Mandatory	Optional
RMD Age increase to 73 for those participants not age 72 by 12/31/2022	X	
Qualified Birth and Adoption Distributions may be paid back 3 years after distribution	X	
Plan with QACA and ACP safe harbor must provide safe harbor notice	X	
Cash balance plan interest crediting rate for variable rate must be reasonable rate, not greater than 6%	X	
End of variable rate PBGC premium; replaces it with flat $52/$1,000 unfunded vested benefit	X	
Named fiduciary (not trustee) responsible to collect contributions to pooled employer plan (PEP)	X	
Roth employer contributions		X
Hardship/unforeseeable emergency self-certification		X
Elimination of certain notices for unenrolled participants		X

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Recap of 2023 Key Provisions - 2

Secure 2.0 Act Provision	Mandatory	Optional
Exemption from 10% early penalty for terminally ill participants		X
Small financial incentives for contributing to a plan		X
Federally-declared disaster relief		X
Increased plan startup credit – administration fees and contributions		X
Private sector firefighters exempt 10% penalty tax, expand public safety ofc'r definition		X
Retroactive first year elective deferrals for sole proprietors		X
EPCRS Overpayments		X
EPCRS Self-Correction		X
Reduction in excise tax for RMD failures (25%/10%)		X
Simple IRA & SEP allow Roth contributions, employee and employer		X
403(b) MEPs and PEPs		X
Tribal courts can issue QDROs		X

Recap of 2023 Key Provisions - 3

Secure 2.0 Act Provision	Mandatory	Optional
Military spouse credit		X
Governmental 457(b) plans - deferral elections can be effective immediately		X
IRA corrective distributions exempt from penalty tax		X
Expand RMD annuity rules and Qualified Longevity Annuity Contracts (QLAC)		X
RMD and excess IRA statute of limitations triggered by federal tax return 1040		X
Governmental plan long-term care insurance		X
Prohibited transaction in one IRA doesn't impact other IRAs		X
Enhancement of qualified charitable distributions		X
Groups of Plans audit requirements determined by each plan		X
Elimination of 415 compensation limit for DB rural electric cooperative plans		X
Extension of overfunded DB plan assets providing retiree health benefits		X
SEPs for household employees		X

Plan Amendments

- Secure 1.0 and Secure 2.0 amendments are now due the same time
- Last day of the first plan year beginning on or after January 1, 2025
  - Calendar year plans – amendment must be signed by December 31, 2025
- Governmental and union plans extended 2 more years
- Plan sponsors and providers must track voluntary provisions for 3 years (5 years for Secure 1.0)

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Sneak Peek: 2024 Secure 2.0 Provisions

- Catch-up contributions must be Roth if participant's compensation is in excess of $145,000 in previous calendar year
- Employer matching contributions on student loan payments
- Emergency savings accounts allowed in defined contribution plans, e.g., 401(k), 403(b)
- Withdrawals for:
  - Emergency expenses
  - Domestic abuse
- Increase automatic rollover from $5,000 to $7,000
- Top-heavy rule changes for defined contribution plans allowing early entry
- 403(b) expansion of available accounts for hardship distributions
- Starter 401(k) Plans

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Key Take-Aways for 2023 Provisions

- Service providers will implement provisions that are mandatory now
- Most conservative is to wait until IRS/DOL guidance is provided to implement optional provisions
  - Many unanswered questions which lead to incorrect administration if implemented without guidance
  - Software programs must be updated to accommodate changes

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More Info:

- Secure 2.0 2024 Provisions – March 28, 2023, 10:00 am PST
- TRI-AD Clients – Contact your Client Services Manager with questions
- NAVIA CLIENTS – Contact sales@naviabenefits.com for more information on Retirement Plan Services

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Thank you for attending our presentation

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