Today's Webinar SECURE 2.0 Act of 2022: Part I will begin shortly

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"Part II: SECURE 2.0 Key Provisions for Employer-Sponsored Retirement Plans – How They Impact Plan Documentation and Operations "

Date: February 14, 2023 – 10:00-11:15 AM PST/1:00-2:15 PM EST

Description: PART II will focus on how SECURE 2.0 impacts the correction of compliance failures and the methods by which — in light of the new law — plan operations might be revised to avoid defects before they occur

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SECURE 2.0 Act of 2022: Part I

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February 9, 2023

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SECURE 2.0
WEBINAR SERIES OVERVIEW

SECURE 2.0 Webinar Part I

- Today's webinar will focus on the key provisions of SECURE 2.0 that impact large and medium-size plan sponsors, highlighting the relevant effective dates and differentiating between the changes that apply only to defined contribution ("DC") plans or only to defined benefit ("DB") plans, and the changes that apply to both plans.
- Today's presenters in order of presentation:
  - Katuri Kaye – Director, Qualified Plans Group
  - Joelle Tavan – Counsel, Qualified Plans Group
  - Nicholas White – Director, Qualified Plans Group
  - Nicolas Deguines – Associate, Qualified Plans Group

SECURE 2.0 Webinar Part II

- PART II will focus on how SECURE 2.0 impacts the correction of compliance failures and the methods by which — in light of the new law — plan operations might be revised to avoid defects before they occur.
- Presenters for Part II:
  - Kevin Nolt, Director, Qualified Plans Group
  - Robert Gower, Director, Qualified Plans Group
  - Adrine Cargill, Associate, Qualified Plans Group
- Part II will be held on February 14th at 10:00-11:15 AM PST / 1:00-2:15 PM EST

Today's Agenda – Part I

- Mandatory Provisions under SECURE 2.0
  - Provisions applicable to both DB and DC plans
  - Provisions applicable to DC plans only
  - Provisions applicable DB plans only
  - Provisions impacting tax reporting/DB plan premiums
- Optional Provisions under SECURE 2.0
  - Provisions impacting DB plans only
  - Provisions impacting DC plans only
- Plan Amendment Deadline
- Looking Ahead/Considerations
- Questions?

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SECURE 2.0 Introduction

- President Biden signed SECURE 2.0 into law on December 29, 2022, as part of the Consolidated Appropriations Act of 2023
- Consolidation of separate retirement bills passed by the House and/or Senate in 2022
- Builds upon the retirement improvements within "SECURE 1.0" of 2019
- Aims to expand retirement coverage and increase retirement savings
- Includes provisions intended to simplify plan rules and generate revenue for the U.S. Department of the Treasury
- Contains more than 90 substantive changes to retirement plan law

MANDATORY PROVISIONS IMPACTING BOTH DB AND DC PLANS

Increase in RMD Age

- The age that retirement plans must commence required minimum distribution ("RMD") payments is now increased to:
  - Age 73, for participants who attain age 72 after December 31, 2022, and before January 1, 2033; and
  - Age 75, for participants who attain age 74 after December 31, 2032
- Apparent drafting error impacting individuals born in 1959 (appear to have RMD age of <u>both</u> 73 and 75)
- **Effective Date**:
  - Plan distributions made after December 31, 2022, with respect to individuals who attain age 72 after such date

Surviving Spouse Election to be Treated as Employee

- Retirement plans must permit spousal beneficiaries to <u>irrevocably</u> elect to be treated as the participant for RMD purposes if the participant dies before attaining RMD age
- Consequences of the election:
  - If the spouse is the participant's sole designated beneficiary, the spouse's RMDs will be determined under the Uniform Lifetime Table, rather than the Single Life Table;
  - The spouse's RMDs will be delayed until the date the participant would have attained RMD age; and
  - If the spouse dies before their RMDs must commence, the RMD rules will apply to the spouse's beneficiaries as if the spouse were the participant

Surviving Spouse Election to be Treated as Employee, cont'd

- SECURE 2.0 directs the Secretary of the Treasury (the "Secretary") to provide rules regarding such spousal elections and "timely notice" to plan administrator, and to update the RMD regulations to provide that RMDs for spouses who make the election shall be determined using the Uniform Lifetime Table
- **Effective Date:**
  - Calendar years beginning after December 31, 2023

Requirement to Provide Paper Statements

- DC plans must provide participants and beneficiaries with one paper benefit statement at least once annually, and DB plans must provide one paper benefit statement at least once every three years unless:
  - the plan follows the electric disclosure safe harbor rules released by the Department of Labor (the "DOL") in 2002; or
  - a participant or beneficiary requests that such statement be provided electronically (if the plan permits requests for benefits statements to be furnished electronically)
- SECURE 2.0 directs the Secretary to update the 2002 DOL rules and issue additional guidance on this item no later than December 31, 2024
- **Effective Date:**
  - Plan years beginning after December 31, 2025

MANDATORY PROVISIONS IMPACTING DC PLANS ONLY

Automatic Enrollment for New Plans

- New 401(k) and 403(b) plans established on or after December 29, 2022, will be required to include an automatic contribution arrangement with:
  - A default deferral rate between 3% and 10%; and
  - An automatic escalation of 1% per year up to at least 10% but not more than 15%; and
  - A 90-day permissive withdrawal feature
- Exceptions: Governmental and church plans, SIMPLE plans, businesses with 10 or fewer employees, and employers that have been in business for less than 3 years
- **Effective Date:**
  - Plan years beginning after December 31, 2024

Elimination of Pre-death RMDs For Roth Accounts

- Roth-designated accounts in a 401(k) or 403(b) plan are exempt from the pre-death RMD requirements
- This new exemption does not apply to RMDs required for years beginning before January 1, 2024, but paid on or after that date
  - For example, 2023 RMDs with a required beginning date of April 1, 2024, must be paid from non-Roth and Roth accounts
- **Effective Date:**
  - Tax years beginning after December 31, 2023

Roth-Only Catch-up Contributions for Certain Participants

- Catch-up contributions to 401(k), 403(b), and governmental 457(b) plans must be made on a Roth basis
- Exception: Participants whose prior year wages year do not exceed $145,000 (rounded down to the lowest multiple of $5,000 and adjusted annually for inflation beginning in 2025)
- **Effective Date:**
  - Tax years beginning after December 31, 2023

MANDATORY PROVISIONS APPLICABLE TO DB PLANS ONLY

Additional Annual Funding Notice Requirements

- Plan administrators must include additional information in their annual funding notices to participants, beneficiaries, and the Pension Benefit Guaranty Corporation ("PBGC"), including:
  - A statement of the value of the plan's assets and liabilities for the preceding two years; and
  - The average return on assets for the plan year
- **Effective Date:**
  - Plan years beginning after December 31, 2023

Correction of Mortality Tables

- For purposes of the minimum funding rules, a pension plan may not assume, beyond the plan's valuation date, future mortality improvements at any age greater than 0.78%
- The Treasury is directed to amend the minimum funding regulations to apply the 0.78% cap on mortality improvement rates and to modify the cap in the future as necessary to reflect material changes in the overall rate of mortality improvement projected by the Social Security Administration
- **Effective Date:**
  - December 29, 2022

Interest Crediting Rates for Cash Balance Plans

- Cash balance plans with variable interest crediting rates must use a projected interest crediting rate that is "reasonable" but not in excess of 6%
- **Effective Date:**
  - Plan years beginning after December 29, 2022

MANDATORY PROVISIONS IMPACTING TAX REPORTING/PBGC PREMIUMS

Exception to Penalty on Early Distributions for Individuals with a Terminal Illness

- Distributions from a DB or DC plan to a participant who is otherwise eligible for a distribution, and who has been determined by a physician to have an illness reasonably expected to result in death within 84 months, will not be subject to the 10% penalty on early distributions
- **Effective Date:**
  - Distributions made after December 29, 2022

Clarification of Substantially Equal Periodic Payment Rule

- An exception to the 10 percent penalty on early distributions currently applies to substantially equal periodic payments that are paid over the participant's life expectancy
- This exception continues to apply in the case of a rollover of the account, an exchange of the annuity, or an annuity that satisfies the RMD rules
- **Effective Date:**
  - Transfers, rollovers, exchanges occurring after December 31, 2023; and
  - Annuity distributions occurring on or after December 29, 2022

Reduction in Excise Tax on Late RMD Payments

- The excise tax imposed on a participant or beneficiary for a failure to timely commence RMDs is reduced from 50% to 25% of the shortfall
- There is a further reduction to 10% if the participant or beneficiary corrects the shortfall during a specified correction window
- **Effective Date:**
  - Tax years beginning after December 29, 2022

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Termination of Variable Rate Premium Indexing

- PBGC variable rate premiums for single-employer DB plans will no longer be indexed for inflation and are permanently set at $52 for each $1000 of unfunded vested benefits
- **Effective Date:**
  - December 29, 2022

OPTIONAL PROVISIONS IMPACTING DB PLANS

Required Disclosures for Lump-Sum Windows

- An enhanced notice must be provided to participants who are offered a temporary lump-sum distribution option under a DB plan at least 90 days before the lump-sum window opens
- Plan sponsors are also required to notify the PBGC and the DOL of the lump-sum offering
- The DOL has been directed to issue regulations and a model notice to implement this new provision
- **Effective Date:**
  - Pending DOL final regulations

Extension of Retiree Health Benefits

- Overfunded DB plans will continue to be permitted to transfer up to 1.75% to pay for retiree health and life insurance benefits through December 31, 2032
- To be eligible, the DB plan must be at least 110% funded
- This is a continuation of prior relief that was to sunset on December 31, 2025
- **Effective Date:**
  - For transfers made after December 29, 2022

OPTIONAL PROVISIONS IMPACTING DC PLANS ONLY

Rules for Qualified Federally Declared Disasters

- SECURE 2.0 codifies tax and qualification relief for distributions made as a result of federally-declared disasters
- A qualified retirement plan, 403(b) plan, and governmental 457(b) plan may permit "affected" participants living in a federal disaster area to make a withdrawal of up to $22,000 within 180 days after the disaster, without being subject to the 10% early withdrawal penalty (applicable period will not end earlier than June 27, 2023)
- Amounts can be taken into income over three years and may be repaid to the plan (in whole or in part) within three years (Amounts repaid treated as a timely rollover contribution)

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Rules for Qualified Federally Declared Disasters, cont'd

- Loan Limit Increases: plans may increase the maximum loan amount to the lesser of $100,000 or 100% of a participant's vested account balance and extend the repayment period for up to one year (with respect to payments due within 180 days of the disaster)
- Home Purchase Relief: hardship distributions used to purchase a home may be recontributed to a plan if those funds were to be used to purchase a home in an area that became a disaster area before the funds were used. Unused withdrawals to purchase a home may be rolled over
- **Effective Date:**
  - Disasters occurring on or after January 26, 2021

Withdrawals Permitted for Certain Emergency Expenses

- A qualified retirement plan, 403(b) plan, and governmental 457(b) plan may allow for **one** penalty-free withdrawal in any **calendar year** of up to $1,000 per year for "unforeseeable or immediate financial needs relating to personal or family emergency expenses"
- The amount available for withdrawal could be less than $1,000, because the withdrawal is limited to the amount by which the individual's account **exceeds** $1,000
- Withdrawal must be repaid within three years to receive rollover treatment
- Only one withdrawal per three-year repayment period is permitted, if the first withdrawal has not yet been repaid

Withdrawals Permitted for Certain Emergency Expenses, cont'd

- Plans may rely on a participant's certification that the distribution requested is for "unforeseeable or immediate financial needs relating to personal or family emergency expenses"
- Emergency expense withdrawals are to be distinguished from Emergency Savings Accounts, which is a separate designated Roth account
- **Effective Date:**
  - Plan years beginning after December 31, 2023

Reliance on Employee Certification of Hardship

- SECURE 2.0 codifies the right of a plan administrator to accept and rely on an employee's certification that:
  - an amount requested for a hardship withdrawal is on account of financial need
  - the amount requested is not in excess of that need; and
  - that the employee has no reasonable available means to satisfy the need
- *But what if the plan administrator has knowledge to the contrary?*
- **Effective Date:**
  - Plan years beginning after December 31, 2022

Penalty-Free Withdrawals for Cases of Domestic Abuse

- A DC plan or governmental 457(b) plan (unless subject to the QJSA requirements) may permit in-service distributions to a victim of domestic abuse by a spouse or domestic partner
- DB plans are not eligible for this rule
- Domestic Abuse: Physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim's ability to reason independently, including by means of abuse of the victim's child or another family member living in the household
- The participant may self-certify the domestic abuse

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Penalty-Free Withdrawals for Cases of Domestic Abuse, cont'd

- The distribution can be made within **one year** after the occurrence of the abuse and the amount may not exceed the lesser of $10,000 (indexed starting in 2025) or 50% of the participant's vested account balance
- Amount withdrawn deemed to meet distribution rules and will not be subject to the 10% early withdrawal penalty
- Repayment Option: Within 3 years and will be given rollover treatment (refund on taxes paid)
- **Effective Date:**
  - Plan years beginning after December 31, 2023

Qualified Long-Term Care (LTC) Distributions

- SECURE 2.0 permits DC plans (including 403(b) and 457(b) plans) to make LTC distributions to pay for certified LTC insurance for an employee or the employee's spouse
- The distribution permitted in any calendar year cannot exceed the least of:
  - the amount paid to or assessed by insurance company
  - 10% of the employee's vested account balance; or
  - $2,500 (to be indexed for inflation beginning in 2025)
- Distributions will be exempt from the 10% early distribution penalty

Qualified Long-Term Care (LTC) Distributions, cont'd

- LTC premium statement from insurer required
- Statement to DOL required
- Insurer must meet certain IRS reporting requirements
- **Effective Date:**
  - Effective for distributions made after December 29, 2025

Higher Catch-up Contribution Limits

- General Rule: DC plan (including 403(b) and 457(b) plans) limit on age 60-63 catch-up contributions has been increased to the greater of:
  - 150% of the catch-up limit in effect for 2024 ***(or is it 2025?)***, or
  - $10,000 (indexed starting in 2026)
- SIMPLE Plans: the limit on age 60-63 catch-up contributions has been increased for 2025 to the greater of:
  - 150% of the SIMPLE catch-up limit for 2025, or
  - $5,000 (indexed starting in 2026)

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Higher Catch-up Contribution Limits, cont'd

- Highly-Paid Employees: If annual wages exceed $145,000, catch-ups must be made on a Roth basis
  - May need plan amendment to provide for Roth contributions
- **Effective Date:**
  - Taxable years beginning after December 31, 2024

Eliminating Unnecessary Plan Notices to Unenrolled Participants

- DC plan sponsors no longer are required to provide certain intermittent notices to "unenrolled participants"
- "Unenrolled participants" include any individual who is eligible for the plan, received the summary plan description ("SPD") when initially eligible (and any other required notices related to eligibility), and is not participating in the plan (However, plan sponsors are still required to send an annual reminder notice regarding eligibility and any applicable election deadlines to unenrolled participants.)

Eliminating Unnecessary Plan Notices to Unenrolled Participants, cont'd

- Provision does not apply to a participant who is eligible to accrue employer-funded benefits under the plan even if the participant has elected to not contribute
- Watch out for nonelective contributions!
- *What about top-heavy plans?*
- *What about matching contributions?*
- **Effective Date:**
  - Plan years beginning after December 31, 2022

Consolidation of DC Plan Notices

- Not later than December 29, 2024, the Secretary and the DOL are directed to adopt regulations to allow, but not require, plan sponsors to consolidate two or more mandatory notices for DC plans under ERISA Sections 404(c)(5)(B) *(an ACA)* and 514(e)(3) *(a QDIA)* and Code Sections 401(k)(12)(D), 401(k)(13)(E) *(s/h plans)*, and 414(w)(4) *(permitted w/ds under an ACA)* into a single notice
- The combined notices must:
  - contain all required information;
  - be written in a manner that can be reasonably understood by the average person;

Consolidation of DC Plan Notices, cont'd

  - clearly identify the applicable issues;
  - meet applicable timing and frequency requirements; and
  - not obscure or fail to highlight the primary information required of each notice
- This option is not intended to prevent the combination of other notices and permitted by current law, regulations, or other official agency guidance
- **Effective Date:**
  - To be completed by December 29, 2024

One Year Service Reduction for LTPT Employees

- Long-Term, Part-Time Employees ("LTPTs"): Under SECURE 2.0, eligibility for part-time workers has been expanded by reducing, from three years to two years, the maximum number of years an employer may require a part-time employee to serve before becoming eligible to make elective deferral contributions
- The law does **not** require LTPTs to be eligible for employer contributions
- SECURE 2.0 clarifies that pre-2021 service may be disregarded for vesting purposes, because it is treated as part of SECURE 1.0
- SECURE 2.0 extends the long-term, part-time coverage rules to 403(b) plans that are subject to ERISA
- **Effective Date:**
  - Plan years beginning after December 31, 2024

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Increased Dollar Limit for Mandatory Distributions

- The involuntary cash-out limit is increased to $7,000 from $5,000
- This change applies to both DC and DB plans
- If the balance is over $1,000, the amount must still be rolled over to an IRA if the participant does not consent to the distribution
- **Effective Date:**
  - Distributions made after December 31, 2023

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Amendments to Increase Benefit Accruals for a Prior Plan Year

- An employer may adopt discretionary amendments to its qualified retirement plan, 403(a) annuity, and 403(b) plan that increase benefits for an immediately preceding plan year, provided the amendment is adopted by the due date of the employer’s tax return for the year in which such amendment is effective
- **Effective Date:**
  - Plan years beginning after December 31, 2023

Optional Treatment of Employer Matching or Nonelective Contributions as Roth Contributions

- 401(a), 403(b), and governmental 457(b) plans may provide participants with the option of receiving employer matching and non-elective contributions as Roth contributions
- Student loan matching contributions (discussed further) may also be designated as Roth contributions
- The contributions are taxed when made and must be 100% vested
- **Effective Date:**
  - December 29, 2022

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

- Employers are permitted to make matching contributions under a 401(k), 403(b), or governmental 457(b) plan or a SIMPLE IRA with respect to "qualified student loan payments" as long as certain requirements are met
- The term "qualified student loan payment" means a payment made by an employee in repayment of a qualified education loan (as defined in the Code) incurred by the employee to pay qualified higher education expenses (A plan may treat a qualified student loan payment as an elective deferral for purposes of the matching contribution requirements under the safe harbor plan requirements.)

Treatment of Student Loan Payments as Elective Deferrals for Purposes of Matching Contributions, cont’d

- Employers are permitted to apply the ADP test separately to employees who receive matching contributions on account of qualified student loan payments
- Employers may reasonably rely on employee certifications of loan payments made
- **Effective Date:**
  - Plan years beginning after December 31, 2023

Emergency Savings Account

- Employers have the option to offer emergency savings accounts that permit non-highly compensated employees to make after-tax contributions to a special savings account within the plan (Employers may also automatically enroll such employees in the program.)
- Eligible employees may defer up to 3% of compensation, up to a total contribution of $2,500 (adjusted for inflation after 2024)
- An employee's contributions to the emergency savings account must be eligible for matching contributions at the same matching rate established under the plan for elective deferrals

Emergency Savings Account, cont'd

- Employees may take at least one tax-free, penalty-free distribution from the savings account per calendar month
- Upon termination of employment, the employee may choose to roll the amount over into a Roth DC plan or Roth IRA, or to take the special account balance as cash
- **Effective Date:**
  - Plan years beginning after December 31, 2023

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Small Immediate Financial Incentives for Contributing to a Plan

- Employers are now permitted to provide *de minimis* financial incentives (e.g., low value gift cards) to participants for contributing to a 401(k) or 403(b) plan
- Such incentives will be exempt from the contingent benefit rule and, therefore, will not trigger the prohibited transaction rules under the Code or ERISA, provided that the incentives are not paid with plan assets
- **Effective Date:**
  - Plan years beginning after December 31, 2022

Limited Repayment Period for Qualified Birth or Adoption Distributions

- The period to repay qualified birth or adoption distributions under a DC plan, 403(a) annuity, 403(b) plan, and governmental 457(b) plan has been set to three years for such repayments to qualify as rollover distributions
- **Effective Date:**
  - For distributions made after December 29, 2022; Note that distributions made prior to December 29, 2022, must be repaid by December 31, 2025

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Hardship Withdrawal Rules For 403(b) Plans

- Conforms the hardship distribution rules for 403(b) plans to those of 401(k) plans
  - Therefore, a 403(b) plan may distribute QNECs, qualified matching contributions, and earnings on any of these contributions (including elective deferrals)
- Also confirms that distributions from a 403(b) plan are not treated as failing to be made upon hardship solely because the employee does not take available loans
- **Effective Date:**
  - Plan years beginning after December 31, 2023

PLAN AMENDMENT DEADLINE

Mandatory and Optional Provisions

- SECURE 2.0 plan amendment deadline is the last day of the plan year beginning on or after January 1, 2025 (i.e., no later than December 31, 2025, for calendar year plans) (January 1, 2027, for governmental plans and certain collectively bargained plans)
- Retirement plans must be operated in accordance with such mandatory (and optional) provision as of the applicable effective date for the mandatory (or implementation date for the optional) provision

LOOKING AHEAD / PLAN CONSIDERATIONS

So Much is Unknown at this Time!

- For a majority of its 90 mandatory and optional provisions, SECURE 2.0 directs (or recommends) the applicable agencies to issue guidance with respect to such provisions, including guidance on how to implement such provisions
- Because of this, we do not recommend any plan amendments <u>until</u> such guidance is issued
- Nonetheless, good faith compliance with SECURE 2.0 must occur with respect to plan administration

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Action Items

- With respect to any mandatory provisions:
  - Coordination needs to occur with plan administrators to ensure that all mandatory provisions are timely implemented
  - Coordination will need to occur to ensure that applicable plan amendments, summary plan description updates or summary of material modifications, plan forms and policies, service agreements, and relevant participant communications and disclosures are timely prepared

Action Items, cont'd

- With respect to any optional provisions:
  - Decisions will need to be made on which of the optional provisions (if any) will be implemented by the plan
  - Once decisions have been made, coordination needs to occur with plan administrators to ensure that all optional provisions are timely implemented
  - Coordination will also need to occur to ensure that applicable plan amendments, summary plan description updates or summary of material modifications, plan form and policies, service agreements, and relevant participant communications and disclosures are timely prepared

QUESTIONS?

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