DC SOLUTIONS

# THE BUZZ FROM WASHINGTON

## SECURE 2.0 SPECIAL EDITION

January 2023

What a way to end the year. The final SECURE 2.0 bill was signed into law on December 29, 2022 by President Biden. This is big, not only in terms of the number and types of retirement provisions that will have a lasting impact on American workers, but the work that went into educating, drafting, negotiating and passing this bill. Bravo to all those involved.

With over 90 retirement provisions included in SECURE 2.0, the process to review, evaluate and seek regulatory guidance is already underway. While some of the provisions are effective "as of date of enactment," most provisions provide a longer runway for implementation.

*The Buzz from Washington* highlights some of the more significant retirement-related legislative and regulatory activities that could have an impact on workers, plan sponsors and their providers. We hope this is a helpful resource as you consider plan design, plan administration, and investment strategies for your plan or clients.

## IN CASE YOU MISSED IT

We held *A Deep Dive Into SECURE 2.0* webinar on January 4, 2023, where guest speaker, Kent Mason, Partner with Davis & Harman, provided a review of the bill's key provisions and answered a plethora of attendee questions. The replay and slide deck are available here**.**

## SUMMARY OF KEY SECURE 2.0 PROVISIONS

| | IMPACTS | REQUIRED OR OPTIONAL (for plan sponsors) | EFFECTIVE DATE |
|---|---|---|---|
| **Part-Time Workers:** Eligibility of long-term part-time workers in 401(k) plans will move from three years to two years of consecutive employment. This updated rule applies to ERISA 403(b) plans as well. | Plan Eligibility | Required | For plan years beginning in 2025 |
| **Auto-Enrollment & Escalation:** New 401(k) and 403(b) plans (plan established after 12/29/2022) must auto-enroll participants at a minimum of 3% and a maximum of 10% savings rate, and auto-escalate contributions by 1% per year up to 10%. Exceptions include government plans, church plans, employers with 10 or fewer employees, new businesses (not in existence for three years), and SIMPLE plans. Employers establishing a new DC plan by joining an existing MEP or PEP are not exempt. | Plan Eligibility & Savings | Required (New Plans Only) | For plan years beginning in 2025 |
| **Employer Contributions:** Employers may permit employees to elect for some or all of their vested matching and nonelective contributions to be treated as Roth contributions under a 401(k), 403(b), or government 457(b) plan. | Savings | Optional | Upon enactment[1] |
| **Student Loan Repayments:** Employers are permitted to make matching contributions under a 401(k) plan and 403(b) plan with respect to qualified student loan payments. Self-certification of student loan payments is allowed, and separate non-discrimination testing of the individuals receiving student loan matching contributions is permissible. Government employers are permitted to make matching contributions into a 457(b) plan (or another plan) as well. | Savings | Optional | For plan years beginning after 12/31/2023 |
| **Financial Incentives:** Allows the use of small financial incentives, such as gift cards, to encourage employee savings within 401(k) and 403(b) plans. | Savings | Optional | Upon enactment[1] |
| **Catch-up Limit:** Participants ages 50 and older are allowed to make catch-up contributions. For 2023, the maximum for 401(k), 403(b) and 457(b) plans is $7,500. For participants ages 60-63, the limit is increased to the greater of $10,000 (indexed) or 150% of the regular catch-up (which would be $11,250 in 2023). Technical drafting error will require a correction before effective date. | Savings | Required (If catch-up is allowed) | Taxable years beginning in 2025 |
| **Catch-up Roth Contributions:** All catch-up contributions must be made on a Roth basis for employees whose wages (as defined for Social Security FICA tax purposes) are over $145,000 (indexed) in the prior year. This means that for certain employees to make catch-up contributions, the plan must offer Roth deferrals. Applicable for 401(k), 403(b) and government 457(b) plans. Technical drafting error will require a correction before effective date. | Savings | Required (If catch-up is allowed) | Taxable years beginning in 2024 |
| **Savers Match:** Currently, eligible taxpayers (low & moderate income) can receive a non-refundable tax credit (up to $2,000 per year) based on contributions to a qualified retirement plan. SECURE 2.0 changes the existing savers credit to a refundable government matching pre-tax contribution which will be deposited into a participant's IRA or retirement plan. There are additional modifications related to the match formula, withdrawal limitations and 5500 reporting. | Savings | Participant directed | Taxable years beginning in 2027 |
| **Emergency Savings (Roth):** Allows for a new emergency savings account within a retirement plan that accepts Roth contributions only, up to a total contribution maximum of $2,500. Participants can be auto enrolled up to 3% and can receive matching contributions (goes into their 401(k) account). Contributions must be invested in a capital preservation option and participants must have easy access (monthly withdrawals) to the funds. High compensated employees are not eligible. | Savings / Distributions | Optional | Plan years beginning in 2024 |

[1] Effective 2023

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|---|---|---|---|
| **Emergency Savings (Pre-Tax):** An emergency distribution of up to $1,000 per year (final amount determined by vested balance) is permitted without triggering an early withdrawal penalty. Self-certification of emergency and the ability to re-contribute the distribution is allowed. To take an additional emergency distribution within a three-year period, a participant must replenish or contribute sufficient funds to their account. | Distributions | Optional | Plan years beginning in 2024 |
| **Required Minimum Distributions (RMDs):** The required beginning date for RMDs will increase from age 72 to 73 in 2023 and to age 75 in 2033. If an individual turns age 72 after 12/31/2022, the new RMD age (73) is applicable to them. | Distributions | Required | Calendar year 2023 |
| **RMD Enhancements:** Roth IRAs are exempt from the pre-death RMD rules. This exemption is now extended to Roth amounts in plans. | Distributions | Required | Taxable years beginning in 2024 |
| **RMD Excise Tax:** The 50% excise tax has been reduced to 25% for failure to take an RMD. If the failure to take an RMD is corrected in a timely manner, the excise tax is reduced to 10%. | Distributions | Required | Upon enactment[1] |
| **Disaster Distributions:** Disaster-related distribution and loan relief is automatically available in cases of qualified federally declared disasters. Applicable for distributions up to $22,000, includes a waiver of the 10% early distribution penalty, and can be recontributed to a plan/account within a 3-year period. | Distributions | Optional | For disasters occurring on or after 1/26/2021 |
| **RMD Calculation & Annuities:** Annuities held within a DC account are not currently included in the RMD calculation (instead, they are subject to DB plan rules), which can result in a higher RMD for an individual. Going forward, annuities can be included (at discretion of participant) in the DC account RMD calculation. Additional guidance is coming from Treasury. | Distributions / Lifetime Income | Optional | Upon enactment[1] |
| **RMD Barriers & Annuities:** Relaxes certain RMD barriers with regards to commercial annuities connected to retirement plans, including the allowance of annual payments increases (if less than 5%), and certain lump sum distributions. | Distributions / Lifetime Income | Relaxes Requirements | Calendar year 2023 |
| **Longevity Annuities:** Removes the 25% account balance cap for a qualified longevity annuity contract (QLAC) purchase and increases the maximum allowable premium amount to $200,000. A "free-look" period and spousal survival rights are now permitted, which is retroactive to July 2014. | Lifetime Income | Optional | Upon enactment[1] |
| **529 to Roth IRA Rollover:** Subject to certain restrictions, assets within a 529 account can be rolled over tax free to a Roth IRA maintained by the same beneficiary. Only permissible for accounts in existence for 15 years, and there is a lifetime maximum per-beneficiary rollover amount of $35,000. | Rollovers | Optional | Distributions beginning in 2024 |
| **New Plan Types:** Establishes two new types of plans – a starter 401(k) and a starter 403(b) plan. These plans require auto enrollment, have reduced annual contribution limits ($6,000), are exempt from non-discrimination testing, and do not allow company contributions. Only available to employers who do not currently offer a plan. | New Plans | Optional | Plan years beginning in 2024 |
| **Enhanced Plan Startup Credit:** A small business (up to 100 employees) that adopts a new plan can currently receive the lesser of $5,000 or 50% of the employer's start-up costs (for up to 3 years). The bill expands this to small employers who join a MEP or PEP and increases the amount to 100% of the employer's start-up costs for employers with 50 or fewer employees. An additional credit can be received for the employer contribution (e.g., 3%) for each employee, not to exceed $1,000 per employee. There are limitations for employers with 51 or more employees, and the annual credits are phased out over a five-year period. No credit is available for employees whose FICA wages exceed $100,000 (indexed). | New Plans | Optional | Tax years beginning in 2023 |

[1] Effective 2023

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|---|---|---|---|
| **Benefit Statements:** Requires at least one benefit statement be furnished in paper form each year. Exceptions include participants who request an electronic statement, and plans that follow the 2002 safe harbor delivery. | Administration | Required | Plan years beginning in 2026 |
| **Correcting Plan Errors:** Provides relief for inadvertent plan errors/violations through the expansion of the Employee Plans Compliance Resolution System (EPCRS) by allowing for self-correction without submission to the IRS, provided certain conditions are met. For automatic contribution and automatic escalation errors that require correction after 2023, these errors may be corrected through a prospective correction, provided certain conditions are met. | Administration | Optional | Upon enactment[1] |
| **Hardship Certification:** Permits participants in 401(k) and 403(b) plans to self-certify hardships for purposes of taking a hardship withdrawal. Permits participants in 457(b) plans to self-certify for unforeseeable emergency distributions. | Administration | Optional | Plan year beginning after enactment[1] |
| **457(b) Plan Deferral Rate Timing:** Eliminates the "first day of the month" rule for government 457(b) plans. Participants can change their deferral rate any time before compensation is received, which is consistent with 401(k) and 403(b) plan rules. | Administration | Eliminates Requirement | Upon enactment[1] |
| **Collective Investment Trusts (CITs) for 403(b) Plans:** Amends the code to allow 403(b) custodial accounts to invest in CITs but falls short of amending the securities registration exemptions necessary to allow 403(b) plans to invest in CITs or insurance company separate accounts, in most cases. | Investments | Optional (No action) | Upon enactment[1] |

## SOURCES

Kent Mason. January 2023. A Deep Dive into SECURE 2.0 presentation.
Groom Law Group. December 2022. "Comparison of the SECURE 2.0 Act of 2022 and Present Law, Groom-Law-Group-Chartered-Comparison-of-the-SECURE-2.0-Act-of-2022-and-Present-Law-December-2022.pdf"
U.S. Senate, Committee on Finance. "SECURE 2.0 Act of 2022 Summary, Secure 2.0_Section by Section Summary 12-19-22 FINAL.pdf (senate.gov)"

## FOR MORE INFORMATION CONTACT:

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## ABOUT PGIM DC SOLUTIONS[2]

As the retirement solutions provider of PGIM, we plan to deliver innovative defined contribution solutions founded on market-leading research and capabilities. Our highly-experienced team will partner with our clients on customized solutions to solve for retirement income. As of 12/31/2022, PGIM has $160 billion[3] DC assets under management.

[2] PGIM DC Solutions does not establish or operate pension plans. PGIM DC Solutions is an SEC-registered investment adviser, a Delaware limited liability company and is a direct wholly owned subsidiary of PGIM Quantitative Solutions LLC, and an indirect wholly-owned subsidiary of PGIM, Inc., the principal asset management business of Prudential Financial, Inc. of the United States of America. PFI of the United States is not affiliated in any manner with Prudential plc incorporated in the United Kingdom or with Prudential Assurance Company, a subsidiary of M&G plc, incorporated in the United Kingdom. Registration with the SEC does not imply a certain level of skill or training.

[3] Reported data reflects the assets under management by PGIM and its investment adviser affiliates for defined contribution investment purposes only.

## NOTES TO DISCLOSURE