

AGENDA

- **Brief Overview of SECURE 2.0 Act**
- **SECURE 2.0 Provisions Effective in 2024 & 2025**
- **Cybersecurity**
- **Proposed Regulations**
 - **Automatic Portability**
 - **Missing Participants**
 - **Plan Forfeitures**
- **Fringe Benefits**



BRIEF OVERVIEW OF SECURE 2.0 ACT

OVERVIEW OF SECURE 2.0 ACT

Setting
Every
Community
Up for
Retirement
Enhancement

- Builds upon the SECURE Act, which was enacted in December 2019
- SECURE 2.0 was signed into law on December 29, 2022
- The provisions have staggered effective dates from 2023 to 2028

SECURE 2.0 ACT PROVISIONS EFFECTIVE IN 2024

SECURE 2.0 PROVISIONS EFFECTIVE IN 2024

- SECURE 2.0 provisions effective in 2024 relate to:
 - Required Minimum Distribution Rules
 - Matching Contributions for Student Loan Payments
 - Emergency Savings Accounts
 - Involuntary Cash-Outs or Rollovers
 - Early Withdrawals for Emergencies & Domestic Abuse

REQUIRED MINIMUM DISTRIBUTIONS FOR ROTH ACCOUNTS

- RMDs are the minimum annual amounts you must withdraw from your retirement accounts
 - You generally must start taking withdrawals from your retirement accounts at age 72 (or 73, if you reach age 72 after December 31, 2022)
 - Roth IRAs do not impose RMDs until after the death of the account owner
- Previously, designated Roth accounts in a 401(k) or 403(b) plan were subject to the RMD rules
 - Account owners could delay RMDs only until they retired
- In an attempt to standardize RMDs for all Roth accounts, SECURE 2.0 provides that lifetime RMDs are no longer required from designated Roth accounts

MATCHING CONTRIBUTIONS FOR STUDENT LOAN REPAYMENTS

- Employees with large student loan debts often do not have resources to contribute to their retirement plans while making student loan payments
- Employers now have the option to match employees' student loan repayments as 401(k) contributions
- Contribution limits still apply, so this option is best for employees who are financially unable to contribute to their retirement due to their student loan liability

PENSION-LINKED EMERGENCY SAVINGS ACCOUNTS

- Available under 401(k), 403(b), and governmental 457(b) plans
- Participants may make Roth (after-tax) contributions to their PLESAs, which they can draw from without incurring the tax penalties they would normally incur by taking an early withdrawal
- Employers may automatically enroll their employees in the PLESA and withhold a portion of their wages up to 3%
- Plan participants do not need to demonstrate an emergency to make a withdrawal from their PLESA.
- Participants may make withdrawals as often as monthly, but plans can allow more frequent withdrawals.
- A plan may impose reasonable fees for withdrawals after a participant's fourth withdrawal in one plan year.

INVOLUNTARY CASH-OUT OR ROLLOVER

- For former employees with small account balances, employers may cash out or rollover into an IRA the account balance without the employees' consent
- The account balance limit prior to 2024 was \$5,000. SECURE 2.0 raised that limit to \$7,000

EARLY WITHDRAWALS FOR EMERGENCIES & DOMESTIC ABUSE

- Employers have the option to allow employees to take one withdrawal per year of up to \$1,000 for emergency expenses, which may be taken without paying the 10% early withdrawal penalty
 - If not repaid, cannot take another withdrawal for 3 years
- Employers may also allow early withdrawals of up to the lesser of \$10,000 or 50% of the vested account value in cases of domestic abuse
 - Must be taken within 12 months of the domestic violence incident
 - Plans may allow participants to “self-certify” that the incident occurred

SECURE 2.0 ACT PROVISIONS EFFECTIVE IN 2025

SECURE 2.0 PROVISIONS EFFECTIVE IN 2025

- SECURE 2.0 provisions effective in 2025 relate to:
 - Automatic Enrollment
 - Catch-Up Contributions
 - Reduction in the Years of Service Requirement for Long-Term Part-Time Workers

AUTOMATIC ENROLLMENT

- Mandatory automatic enrollment applies to 401(k) and 403(b) plans ***established after December 29, 2022***
 - Beginning in 2025, 401(k) and 403(b) plans must automatically enroll employees
- The initial contribution amount must be between 3% and 10%
- Each year, the contribution amount must automatically escalate by 1% until it reaches 10% to 15%

CATCH-UP CONTRIBUTIONS

- Plan participants can contribute \$23,000 per year to their 401(k) accounts
- Participants age 50+ can make “catch-up” contributions in addition to the \$23,000 limit
- Currently, plan participants age 50+ can contribute an extra \$7,500 per year to a 401(k) account (totaling \$30,500 annually)
- In 2025, the limit on catch-up contributions will increase to \$10,000 per year for participants aged 60 to 63 (totaling \$33,000 annually)

REDUCTION IN THE YEARS OF SERVICE REQUIREMENT FOR LONG-TERM PART-TIME WORKERS

- Before the SECURE Act, plans could exclude individuals who worked less than 1,000 hours in the plan year from being eligible to participate in the plan
- As a result, long-term part-time workers would never be eligible to participate
- The SECURE Act required 401(k) plans to allow long-term part-time employees to participate after working 500 hours for 3 consecutive plan years
- The SECURE 2.0 Act shortens the 3-year period to 2 years

CYBERSECURITY

CYBERSECURITY

- Cybersecurity should be taken seriously by plan sponsors
- ERISA does not include any provisions covering cybersecurity, but it does impose broad fiduciary duties
- DOL audits of retirement plans now include looking into cybersecurity practices
- Participants have begun to file lawsuits for breach of fiduciary duty based on cybersecurity incidents
- The DOL has provided cybersecurity guidance for retirement plans; the guidance is related to:
 - Hiring service providers
 - Cybersecurity program best practices
 - Online security tips

CYBERSECURITY

HIRING SERVICE PROVIDERS

- Ask the service provider about its standards and processes related to security and compare them to industry standards
- Ask for and review the service provider's audit results
- Ask the service provider how it validates its practices, and what levels of security standards it has met and implemented
- Evaluate the service provider's track record in the industry
- Ask about past security breaches and responses
- Ask about whether the service provider maintains insurance to protect against losses from security breaches
- Ensure the contract requires ongoing compliance with cybersecurity and information security standards, as well as other provisions that would enhance security

CYBERSECURITY

PROPOSED REGULATIONS

- Last year, the SEC issued proposed regulations regarding cybersecurity
- ERISA fiduciaries should consult these regulations when evaluating their service providers' cybersecurity practices
- The SEC's proposed regulations would, among other things:
 - Require SEC-regulated brokers and dealers, investment companies, and investment advisers to adopt policies and procedures to address consumer data breaches
 - Require covered entities to notify affected individuals
 - Expand current requirements for safeguarding and properly disposing of consumer information
 - Require maintaining written records documenting compliance

PROPOSED REGULATIONS

AUTOMATIC PORTABILITY PROPOSED REGULATIONS

- In late January, the DOL issued a notice of proposed rulemaking regarding automatic portability
- Employees have multiple options after changing jobs:
 - Leave retirement savings in their former employers' plans
 - Transfer retirement savings to their new employers' plans
 - Roll over their accounts into an IRA
 - Cash out

AUTOMATIC PORTABILITY PROPOSED REGULATIONS

- Employers may also automatically transfer small balances into an IRA in the employee's name
 - Previously, plans could transfer balances of up to \$5,000. SECURE 2.0 raised that limit to \$7,000
- An automatic portability transaction occurs when that IRA balance is automatically transferred to a new employer's plan in which the employee is an active participant
- Automatic portability providers facilitate these transactions by finding and matching participant accounts and processing the transfers

AUTOMATIC PORTABILITY PROPOSED REGULATIONS

- Automatic portability providers must acknowledge their fiduciary status
 - Automatic portability providers are prohibited from using any data they obtain for any purpose other than to carry out the transactions or locate missing participants
 - Fees and compensation by the plan must not exceed reasonable compensation
 - The fees charged by the automatic portability provider must be the same for every plan at any given time
- Amounts received by a transfer-in plan are deemed to be properly invested if they are invested according to the participant's current investment election or if no election is made or permitted, in the plan's qualified default investment alternative

MISSING PARTICIPANT DATA PROPOSED REGULATIONS

- On April 15, 2024, the DOL issued a notice of proposed rulemaking regarding collecting data on missing participants
- SECURE 2.0 requires the DOL to create an online searchable database called the Retirement Savings Lost and Found
- This database would allow individuals to search for the contact information of their plan administrator to make claims for benefits

MISSING PARTICIPANT DATA PROPOSED REGULATIONS

- The DOL's proposed regulations ask plans to voluntarily submit data to the DOL with their next Form 5500
- SECURE 2.0 contemplated plans providing the missing participants' names and taxpayer ID numbers
- The DOL requests much more information, including:
 - Missing participants' dates of birth, mailing addresses, email addresses, and telephone numbers
 - Whether the missing participants are past normal retirement age and unresponsive
 - Historical information about the plan, including any prior plan names, prior plan administrators, and prior sponsors
- The DOL requests data "dating back to the date a plan became subject to ERISA . . . or as far back as possible, if shorter."

MISSING PARTICIPANT DATA PROPOSED REGULATIONS

- The DOL does not provide much assurance regarding data security, stating only that “[m]ultiple security measures will be in place to protect . . . data”
- There is no safe harbor for fiduciaries who voluntarily provide the information requested if that information is later compromised, incomplete, or incorrect

PLAN FORFEITURES PROPOSED REGULATIONS

- When a participant terminates, the non-vested portion of the employer's contribution becomes a plan forfeiture
- Last year, the IRS issued proposed regulations on when and how plan forfeitures can be used
- The proposed regulations provide that forfeitures may be used:
 - To pay plan administrative expenses
 - To reduce employer contributions under the plan
 - To increase benefits in other participants' accounts in accordance with the terms of the plan
- The proposed regulations also provide that forfeitures must be allocated within 12 months after the end of the plan year in which they were incurred

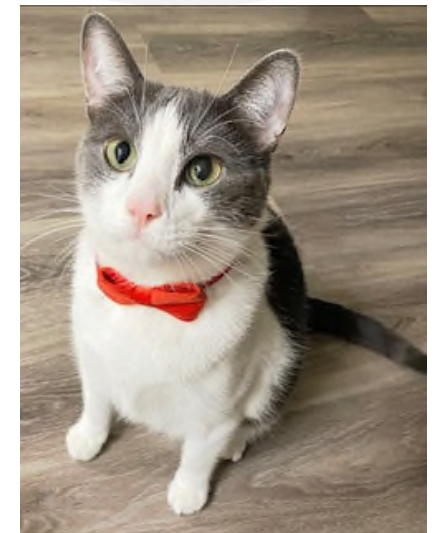
PLAN FORFEITURES PROPOSED REGULATIONS

- In September 2023, the DOL ordered Sypris Solutions Inc. to restore \$575,000 to its 401(k) plan participants after it used plan forfeitures to reduce its contributions
- The Sypris plan provided that forfeitures must be used to pay plan expenses, so this action violated the terms of the plan
- The DOL also reasoned that Sypris benefited “at the expense of plan participants”
- As a result, some class action lawsuits have been filed against companies who used forfeitures to reduce employer contributions
- Even though the plans complied with the IRS regulations, it is possible that they may be held liable because of the DOL’s reasoning in the Sypris order

FRINGE BENEFITS

FRINGE BENEFITS OVERVIEW

- What are some examples of fringe benefits?
 - Health Insurance
 - Life Insurance
 - Pet Insurance
 - Personal Use of Company Vehicles
 - Corporate Jet Use
- Taxable as income unless exempted
- For employees to contribute pre-tax to certain fringe benefits, employers must create a cafeteria plan



TUITION REDUCTION

- Employees of educational institutions can exclude from their gross income a qualified tuition reduction provided by the employer
- Must be for education below the graduate level
- The tuition reduction can be provided to the employee, their spouse, or their dependent children
- No monetary limit

CORPORATE JET USE

- Tax liability for the company
 - The IRS announced in February that it plans to audit corporate jet use
 - Tax law allows companies to deduct the costs associated with corporate jets if they are used for business purposes
 - Recordkeeping is key
- Tax liability for the employee
 - Personal use of a corporate jet is a fringe benefit
 - The fair market value of the flight is taxable as income

PET INSURANCE

- Pet insurance and other fringe benefits related to pet care are not exempted, so these benefits are taxable as income
- As a workaround, companies can choose to offer pet insurance to their employees at a discounted group rate, which their employees can pay the premiums for with after-tax payroll deductions



Thank you!

Questions?

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