



# CUPA-HR Washington Update: SECURE 2.0 Retirement Reform Becomes Law

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CUPA-HR Webinar

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# Presenter



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# Agenda

**Required minimum distribution provisions**

**Defined benefit plans**

**Defined contribution plans**

**New exceptions to early withdrawal penalty**

**Governmental plans**

**Corrections**

**Miscellaneous provisions affecting all retirement plans**

# Background

- SECURE Act was enacted on December 20, 2019
- SECURE 2.0 enacted December 29, 2022
  - Division T of the 2023 Consolidated Appropriations Act
  - Supplements and integrates with SECURE Act
- Few provisions effective for 2023
- Amendments are required by end of 2025 plan year (2027 for collectively bargained plans and governmental plans)

Provisions aimed at small employers and small plans and provisions dealing with IRAs, SIMPLEs and SEPs, ESOPs, and the Saver's Match are not discussed in this presentation.

# Required Minimum Distributions



# Increase the Required Beginning Date Age

- SECURE Act increased RBD age from 70½ to 72
- Increases RBD age to 73 for anyone who had not attained age 72 before January 1, 2023
- Increases RBD age to 75 for anyone who had not attained age 74 before January 1, 2033
- Section 107

**Key takeaway:** This is a change to the tax rules that does not affect when plans can require participants to begin receiving benefits. Plans will need to amend their RMD language eventually.

# Commercial Annuities

- Current RMD rules require annuities to be non-increasing (except for COLAs)
- Payments may now increase up to 5% annually
- Commercial annuities purchased in a retirement plan may also now:
  - Pay lump sums that shorten payment period
  - Accelerate next 12 months payments
  - Provide for return of premiums upon death (less prior payments)
  - Pay certain dividends
- Effective for 2022 calendar year
- Section 201

**Key takeaway:** This will make the purchase of commercial annuities in retirement plans more attractive, particularly with the increase in annual payments and the return of premium feature.



# Expand Qualifying Longevity Annuity Contract (QLAC) Increases

- Currently premium is limited to lesser of 25% of the account or \$145,000
- SECURE 2.0 repeals 25% limit and increases dollar limit to \$200,000
- New 90-day free-look provision
- Effective for contracts purchased or received in an exchange on or after December 29, 2022
- Treasury directed to update regulations within 18 months of December 29, 2022
- Section 202

**Key takeaway:** These changes are intended to make QLACs more readily available and provide greater income in retirement at later ages.

# Partial Annuities

- Current rules do not reduce RMD that must be paid when a partial annuity is purchased, even if annuity payment plus remaining RMD payments exceed RMD without an annuity
- New offset for annuity amount against remaining RMD
- Effective December 29, 2022
- Section 204

**Key takeaway:** This provision will result in smaller RMDs and will encourage the use of annuities to provide retirement income.

# Reduce Penalty for RMD Failures

- Reduces the penalty tax on participants who fail to take RMDs from 50% to 25% of the missed distribution
- If the failure is corrected in a timely manner, the tax is reduced to 10%
- Effective for taxable years beginning after December 29, 2022
- Section 302

**Key takeaway:** The penalty is imposed by the IRS; no plan amendment is needed. Plan documents, forms and notices that describe the 50% penalty tax will need to be updated.

# Eliminate Pre-death RMDs from In-plan Roth Accounts

- Roth IRAs are not subject to the RMD rules if IRA holder dies before RBD
- SECURE 2.0 would apply this same rule to Roth accounts in 401(k), 403(b) and governmental 457(b) plans
- Effective for taxable years beginning after December 31, 2023
  - Does not eliminate the rule for payments for calendar years beginning before January 1, 2024 that are permitted to be paid on or after that date
- Section 325

**Key takeaway:** Currently, participants roll over the Roth 401(k) to a Roth IRA before the RBD. This will prevent them from having to do so to avoid RMDs.

# Allow Surviving Spouse to Elect to Be Treated as the Employee

- Surviving spouse of a participant who dies before commencing distributions is generally required to take RMDs no later than when the participant would have reached RBD
- Surviving spouse may now elect to be treated as the employee for RMD purposes
  - I.e., when the surviving spouse reaches RBD
- Effective for calendar years beginning after December 31, 2023
- Section 327

**Key takeaway:** This will generally delay when the surviving spouse must take RMDs. Plan materials may need to be revised to describe this provision.

# Definition of Multi-beneficiary Trust

- SECURE Act introduced special RMD rules if a multi-beneficiary trust is designated as beneficiary of DC plan
- Clarification that a special needs trust shall not be considered a multi-beneficiary trust for post-death distributions, solely because the trust includes a charity as a beneficiary
  - Special needs trust: established for a chronically ill or disabled eligible designated beneficiary
- Section 337

**Key takeaway:** This change opens the way for special needs trusts as beneficiaries, particularly when state law requires a charity to be the beneficiary.

# Defined Benefit Plans



# Limit Funding Mortality Table Improvements

- Minimum funding rules: plans are no longer required to assume future mortality improvements of greater than 0.78 after the valuation date
- Treasury is to modify 0.78 as necessary to reflect material changes in overall rate of improvement projected by Social Security Administration
- Effective December 29, 2022
  - Treasury is directed to amend the current regulation by June 29, 2024
- Section 335

**Key Takeaways:** Not likely to have much impact in light of the increase in mortality because of Covid.



# Enhanced Disclosures for Lump Sum Windows

- Plans offering a lump sum window must provide participants and retirees with specified information 90 days before the window to help determine whether lump sum is best for financial future compared to other options under the plan
- DOL must issue regulations by December 29, 2023
  - Regulations must be applicable not earlier than the issuance of a final rule and not later than one year after issuance of a final rule
- Section 342

**Key Takeaways:** DOL has been concerned that participants have been electing lump sums without realizing that they may give up value in the conversion of the annuity to a lump sum. The provision requires special information to the participant.

# Revise the Annual Funding Notice

- AFN discloses certain identifying and funding information about DB plans
  - Sent to participants, beneficiaries receiving benefits, participating unions, and contributing employers
- SECURE 2.0 requires additional information to make the notice more useful for participants
- Effective for plan years beginning after December 31, 2023
- Section 343

**Key Takeaways:** Legislation started out as a way to simplify; wound up with even more information required.

# Permit Cash Balance Plans to Project Interest at a Reasonable Rate

- Cash-balance plans and other hybrid plans with variable indices need to project interest for several purposes
- Current law requires projections at the prior year's rate, which overemphasizes the positive or negative return of the prior year
- A new rule allows that projection to be at a reasonable rate (not to exceed 6%)
- Effective for plan years beginning after December 29, 2022
- Section 348

**Key Takeaways:** The provision will simplify cash balance plan design and administration and provide a more logical approach.

# Eliminate Indexing of Variable Rate Premium

- The VRP is indexed each year by a cost-of-living index
- The Act eliminates further indexing of the VRP; the per participant cap is still indexed
- VRP would be frozen at the rate of \$52 for each \$1,000 of unfunded vested benefits
- Effective December 29, 2022
- Section 349

**Key Takeaways:** Single employer plan sponsors have complained for a long time that the VRP was double-indexed because it is already based on a percentage of non-funded vested benefit liabilities.

# Permit Pension Transfers to 401(h) Account

- Transfers of DB assets to the 401(h) account are allowed only if the plan is substantially overfunded (adjusted assets exceed 125% of funding target)
  - This provision would have expired in 2025
- Act extends this provision until 2032
- Additional provision: percentage funding is lowered from 125% to 110% if no more than 1.75% of pension assets are transferred
- Effective for transfers made on or after December 29, 2022
- Section 606

**Key Takeaways:** The big news is the extension through 2032.

# Defined Contribution Plans



# Required Automatic Enrollment

- All new 401(k) and 403(b) plans are required to have automatic enrollment
  - 3% initial deferral amount
  - Required to automatically escalate by 1% per year until reaching 10%
  - Plan may provide for initial deferral up to 10%; automatic escalation up to 15%
- Exceptions: existing plans, businesses with 10 or fewer employees, businesses less than 3 years old, church plans, governmental plans
- Effective for plan years beginning after December 31, 2024
- Section 101

**Key Takeaway:** This provision is designed to get more people saving for retirement.

# Named Fiduciary (PEPs)

- Current law provides for one named fiduciary
  - Raised concerns that one fiduciary would have to both do recordkeeping and collect contributions
- PEPs may now name a non-employer fiduciary solely to collect contributions
- Effective for plan years beginning after December 31, 2022
- Section 105

**Key Takeaways:** Response to comments to DOL that recordkeepers do not pursue delinquent contributions.



# 403(b) MEPs and 403(b) PEPs

- SECURE Act addressed qualified DC plan MEPs and PEPs but not 403(b) plans
- SECURE 2.0 allows 403(b) plans to participate in MEPs and PEPs
  - Same general terms that apply to 401(k) plans
  - Including relief from one-bad-apple rule
- Effective for plan years beginning after December 31, 2022
- Section 106

**Key Takeaways:** Certain employer groups (such as hospital and higher education consortiums) have been looking at MEPs and PEPs to save time and costs. This should them with additional options.

# Higher Catch-up Contributions by Older Participants

- Currently workers over 50 may make catch-up contributions up to a limit (\$7,500 in 2023)
- Limit is increased for workers attaining age 60-63 during the year
  - Greater of \$10,000 or 50% more than regular catch-up amount in 2025
  - Indexed for inflation after 2025
- Effective for tax years beginning after December 31, 2024
- Section 109

**Key Takeaways:** Enables older participants closer to retirement to increase their amount saved.

# Student Loans

- 401(k), 403(b), and governmental 457(b) plans may treat student loan payment as an elective employee contribution for purposes of triggering matching contributions
- These employee contributions can be counted in the ACP test for nondiscrimination
- Loan recipients can be tested separately for ADP purposes
- Effective for contributions made for plan years beginning after December 31, 2023
- Section 110

**Key Takeaway:** Although not effective until next year, plan sponsors that want to add it to their plans will need lead time.

# Small Incentives for Retirement Savings

- Generally, employers may not provide anything but match as incentive to make elective contributions
- Employers may now provide small financial incentives to employees
  - Such as gift cards in small amounts
  - Cost of incentive cannot come from plan assets
  - Applies to 401(k) plans and 403(b) plans
- Effective for plan years beginning after December 29, 2022
- Section 113

**Key Takeaways:** Congress was looking for other ways for employers to encourage their employees to save for retirement.

# Revise “Long-Term, Part-Time”

- SECURE Act required **non-collectively bargained** 401(k) plans to allow long-term, part-time workers to elect contributions
  - 500 hours in 3 consecutive years.
- Changes 3 years to 2 years
- Expanded to ERISA-covered 403(b) plans
- Pre-2021 service may be disregarded for vesting
- Effective for plan years beginning after December 31, 2024
- Section 125

**Key Takeaways:** Note that this only applies for 401(k) and 403(b) plans and does not apply to collectively bargained plans.

# Emergency Savings – “Sidecar”

- Pension-linked emergency savings account
- Option to offer non-highly compensated employees emergency savings accounts within retirement plan
- Employers may automatically opt employees in at no more than 3% of salary (employee can opt out or opt for less or more)
- Portion of account attributable to employee contributions is capped at no more than \$2,500 (sponsor could set it at less)

**Key Takeaways:** Although not effective until next year, plan sponsors that wish to do this will need lead time and should consider this plan design issue now.

# Emergency Savings – “Sidecars” continued

- For purposes of any employer match, is treated as an elective Roth contribution to the non-emergency portion of the plan
- At separation from service, may take as cash or roll it into Roth DC plan or Roth IRA
- Effective for plan years beginning after December 31, 2023
- Section 127

**Key Takeaways:** Although not effective until next year, plan sponsors that wish to do this will need lead time and should consider this plan design issue now.

# Emergency Savings – Small Emergency Withdrawals

- New distribution rule allows withdrawal of a small amount (\$1,000) out of DC plan
  - Can be taken once every 3 years
  - Option of repaying it within 3 years
  - Cannot take out another \$1,000 unless the amount has been repaid or three years have passed
- Not allowed in-service from a money purchase plan
- Exempt from the 10% premature distribution penalty regardless of whether it is repaid
- Effective for distributions made after December 31, 2023
- Section 115

**Key Takeaways:** Although not effective until next year, plan sponsors that wish to do this will need lead time and should consider this plan design issue now.



# Permit 403(b) Plans to Use Collective Investment Trusts

- Allows 403(b) custodial accounts to be invested in collective trusts under the tax and ERISA rules
- Securities law amendments are needed and are not included in SECURE 2.0, so 403(b)s must wait until then before using collective trusts
- Effective December 29, 2022
- Section 128

**Key Takeaways:** Stay tuned for securities legislation.

# Birth or Adoption Distribution Repayment

- SECURE Act provided that distributions related to the birth or adoption of a child are exempt from early distribution penalty
  - Distributions may be repaid
- SECURE 2.0 limits the period in which the plan must accept repayment to 3 years
- Effective for distributions made after December 29, 2022
  - Distributions made prior to December 29, 2022 may be paid back any time before January 1, 2026
- Section 311

**Key Takeaways:** Plan administrators have been waiting for this provision. This provides clarity as to how long the repayment window is open.

# Permit Self-certification of Hardship

- 401(k) and 403(b) plans may now accept a participant's self-certification of hardship event
  - Participants can certify other component of hardship eligibility: financial need
  - Also applies to unforeseeable emergency distributions from governmental 457(b) plans
- Treasury may provide that plan cannot accept self-certification if actual knowledge of falsehood
- Effective for plan years beginning after December 29, 2022
- Section 312

**Key Takeaways:** This now gives plans the ability to use self-certification for all aspects of hardship distributions. It should simplify the process.

# Mixed-performance Benchmarks

- DOL rules limit permissible benchmarks for disclosure of mixed-asset investments (i.e., target date funds)
- SECURE 2.0 directs DOL to update regulations so that mixed-asset investments can be benchmarked against a blend of broad-based securities market indices
- DOL must update regulations by December 29, 2024
- Section 318

**Key Takeaways:** Plan participants will now have easier way to compare performance of mixed-asset investments to a meaningful benchmark.

# Limit Notices to Unenrolled Participants

- DC plans may eliminate all notices to unenrolled participants other than annual election reminder notice and other standard notices, such as an SPD, except upon request
- Unenrolled participants: participants who do not elect to participate for a year and have no existing account balances
- Effective for plan years beginning after December 31, 2022
- Section 320

**Key Takeaways:** Employers will generally save on the costs of sending out notices as a result of this provision.

# Uniform Qualified Disaster Rules

- Permanent rules for the use of retirement funds in the case of any federally declared disaster
- Plans can permit distributions of up to \$22,000 free of the 10% premature distribution penalty
  - May be taken into account as gross income for federal income tax purposes over 3 years
  - May be repaid within 3 years
  - May be made in-service from DC plans including money purchase plans
- Limit on loans increased to lesser of 100% of vested account balance or \$100,000
- Distributions prior to disaster to purchase a home can be recontributed
- Effective for disasters occurring on or after January 26, 2021
- Section 331

**Key Takeaways:** Rather than wait for a new law to be enacted and/or the IRS to issue rules, participants who suffered as a result of disaster will now be able to get relief from their retirement accounts as soon as the disaster is declared, if their plan so provides.

# “Group of Plans” Audits

- DOL proposed regulation on “group of plans”
  - Common trustee, administrator, investments, fiduciaries, plan year
  - Allowed to file one Form 5500 for the entire group
  - Requires audits at the group level
- SECURE 2.0 instructs DOL to include in final regulation that there will be no group level audits
  - DOL may require audits at individual plan level if over 100 participants
- Effective December 29, 2022
- Section 345

**Key Takeaways:** Joining a “group of plans” is now more attractive for smaller employers who want to have a separate plan. Cost of audit would have discouraged small plans from joining.

# 403(b) Hardship Sources

- Bipartisan Budget Act of 2018 expanded available sources for 401(k) plan hardship distributions to include Qualifying Matching Contribution (QMACs) and Qualifying Non-Elective Contributions (QNECs), as well as all earnings
- SECURE 2.0 makes QMACs, QNECs, and earnings available for all 403(b) plan hardship distributions
- Effective for plan years beginning after December 31, 2023
- Section 602

**Key Takeaways:** Makes 403(b) rules parallel to 401(k) rules.



# Roth Contribution Rules

- All catch-up contributions are treated as Roth contributions
  - Except for employees with compensation in prior calendar year of \$145,000 or less (indexed)
  - Effective for taxable years beginning after December 31, 2023
- DC plans may permit participants to elect to receive employer matching and or nonelective contributions on Roth basis
  - Effective December 29, 2022
- Sections 603 and 604

**Key Takeaways:** This provision is contained in the bill as a temporary revenue raiser. Down the road, participants may be grateful for the tax-exempt distributions.

# Governmental Plans



# Eliminate First Day of the Month Rule

- If a 457(b) participant makes or changes a deferral election, it cannot be effective prior to first day of the month
  - 401(k), 403(b) plans only must defer prior to compensation being available
- First day-of-the-month rule is eliminated for governmental 457(b) plans (but not nongovernmental 457(b) plans)
- Effective for taxable years beginning after December 31, 2022
- Section 306

**Key Takeaways:** This will simplify administration for governmental section 457 plans

# New Exceptions to Early Withdrawal Penalty



# Withdrawals Related to Domestic Abuse

- Special distribution due to domestic abuse exempt from 10% premature distribution penalty
  - Available for 401(k), 403(b), and governmental 457(b) plans if the plan allows
  - DB or money purchase plan participants must be separated or retired
- Limited to \$10,000 or 50% of the account, if less
- May be repaid to an IRA (or plan may accept repayments) within three years
- Must satisfy domestic abuse standard of IRC § 72
- Effective for distributions made after December 31, 2023
- Section 314

**Key Takeaways:** While no amendment is needed where the participant already can get a distribution, a plan amendment may be needed, depending on plan wording, to allow for a new distributable event.

# Substantially Equal Periodic Payments

- Currently early withdrawal penalty does not apply to substantially equal periodic payments made over recipient's life expectancy
- SECURE 2.0 clarifies that the exception continues to apply after rollover, exchange of nonqualified annuities, or RMD
- Effective for transfers, rollovers, and exchanges after December 31, 2023
- Effective for nonqualified annuity distributions on or after December 29, 2022
- Section 323

**Key Takeaways:** Account owners will no longer be required to keep their money with the institution where they started the periodic payments in order to stay within the exceptions. They can now move their money elsewhere.

# Terminally Ill Individuals and Long-Term Care Distributions

- 10% early withdrawal penalty no longer applies in the case of:
  - Distribution to a terminally ill participant (after doctor certification); amounts may be repaid within 3 years
  - Up to \$2,500 distribution to pay for qualified long-term care contracts for participants and spouses; distributions may be made in-service from a 401(k), 403(b) or 457(b) plan
- Effective for distributions made after December 29, 2022
- Sections 326 and 334

**Key Takeaways:** These provisions provide more ways to avoid the 10% penalty, while providing flexibility.

# Corrections





# Overpayment Relief

- Fiduciary relief
  - Plan fiduciaries would not be required to seek recovery of mistaken overpayments from participants
  - Fiduciaries would not have to make a payment to plan in lieu of seeking repayment
  - Rollovers remain valid
  - Future payments may be reduced to correct amount
- Effective December 29, 2022
  - Special rules for determinations prior to enactment to seek or not to seek recovery of overpayments
- Section 301

**Key takeaway:** Many fiduciaries do not want to pursue recovery but feel they must do so even though it was the plan's mistake. This provision provides fiduciaries with flexibility.

# Overpayment Relief Continued

- Participant protections for recovery of overpayments
  - Fiduciaries' ability to recover overpayments limited if inadvertent error first occurred more than 3 years before resulting overpayment was identified
  - Plan is not allowed to charge interest
  - Reductions are limited to 10% of correct payment amount
  - Fiduciaries are to consider the participant's financial hardship and legitimize any rollovers of the overpayment the participant had already made to IRAs or another plan

**Key takeaway:** This protects participants when the plan fiduciary wants to recover its inadvertent mistake

# Self-correction


- Broadly expands a plan's ability to use self-correction if the failure is inadvertent
- Relief from DOL rules for failures related to loans
- Treasury is to revise Employee Plan Compliance Resolution System (EPCRS) guidance no later than December 29, 2024
- Section 305

**Key takeaway:** It is not clear at this point whether plans can use this relief prior to the issuance by IRS of revised EPCRS guidance.

# Correcting Automatic Enrollment Failure

- EPCRS currently limits correction rule to automatic enrollment and automatic escalation failures that occurred on or before December 31, 2023
- Extended to errors after December 31, 2023
- Grace period for correction: 9½ months after end of plan year in which mistake was made
- Section 350

**Key takeaway:** The industry has called for this correction to be made permanent and Congress has obliged. Plan administrators now have a clear path for correcting this error.



# Miscellaneous Applicable to All Retirement Plans

# Auto-Portability

- Plans may distribute very small account balances upon a distributable event
  - If less than \$5,000 (\$7,000 for distributions after December 31, 2023), participant must be offered rollover
  - If participant does not provide rollover information, plan may rollover into default IRA
  - DOL has issued a prohibited transaction exemption (PTE) to an organization that automatically transfers the default IRA into participant's new employer's plan
- SECURE 2.0 eliminates need for individual PTE
- Effective for transactions made after December 29, 2023
- Section 120

**Key Takeaways:** To the extent it is used, this will remove “leakage” from the system as amounts wind up in the participant's new employer's plan.

# Lost and Found Registry

- Online searchable register at DOL that will allow participants to find where their plan benefits currently sit
  - E.g., after a merger, change of administrators or purchase of an annuity contract
- DOL is to create database no later than December 29, 2024
- Section 303

**Key Takeaways:** This is intended to allow participants and survivors to find their accounts after mergers – mainly of companies with DB plans. It does not help plans with missing participants.

# Increase Cash-out Amount

- Plans may distribute small benefit amounts without participant filing an application
- Increases the permissible non-consent cash-out limit, now \$5,000, to \$7,000
- Effective for distributions made after December 31, 2023
- Section 304

**Key Takeaways:** This is optional not required. If plan currently refers to IRC section, it is automatic; otherwise an amendment is needed. Mandatory distribution limit is not protected against cutback so sponsor can change to higher or lower.



# Allow Retroactive Amendments Until Tax Filing Date

- Currently retroactive amendments that do not decrease benefits must be made by the end of the plan year in which they are effective
- The Act allows retroactive amendments increasing benefits (except matching contributions) to be made up to the plan's Form 5500 filing date (or, for single employer plans, the employer's tax-filing date), including extensions
- Effective for plan years beginning after December 31, 2023
- Section 316

**Key Takeaways:** Note that this is limited to increases in benefit accruals (other than matches). Other discretionary amendments still must be made by the end of the plan year.

# Annual Paper Benefit Statement

- Narrows electronic disclosure rules by requiring at least one paper notice before electronic notices unless certain conditions are met
  - DC plans: unless participant elects otherwise, at least one benefit statement each year must be on paper
    - Participant directed DC plans: other 3 can be electronic
  - DB plans: unless participant elects otherwise, paper statement may be provided at least every 3 years
  - Exception for plans allowing employees to opt in electronic statements under DOL 2002 safe harbor
- DOL is to update regulations and guidance by December 31, 2024, effective for plan years beginning after December 31, 2025
- Section 338

**Key Takeaways:** This provision had the backing of advocacy groups for the elderly. Sponsors thought it created unnecessary costs.

# Native American Tribal Court QDROs

- Plans are required to treat domestic relations orders issued by Native American Tribal Courts in a manner similar to those issued by other courts
- Effective for domestic relations orders received by the plan after December 31, 2022, including any such order which is submitted for reconsideration after such date
- Section 339

**Key Takeaways:** Because of the statutory language, there has been a question whether domestic relations orders issued by a Native American Tribal Court can be QDROs.

# Have a Question?



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# Thank You

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