BANK OF AMERICA

WORKPLACE BENEFITS

The SECURE 2.0 Act

Summary of recent regulatory guidance and considerations for plan sponsors

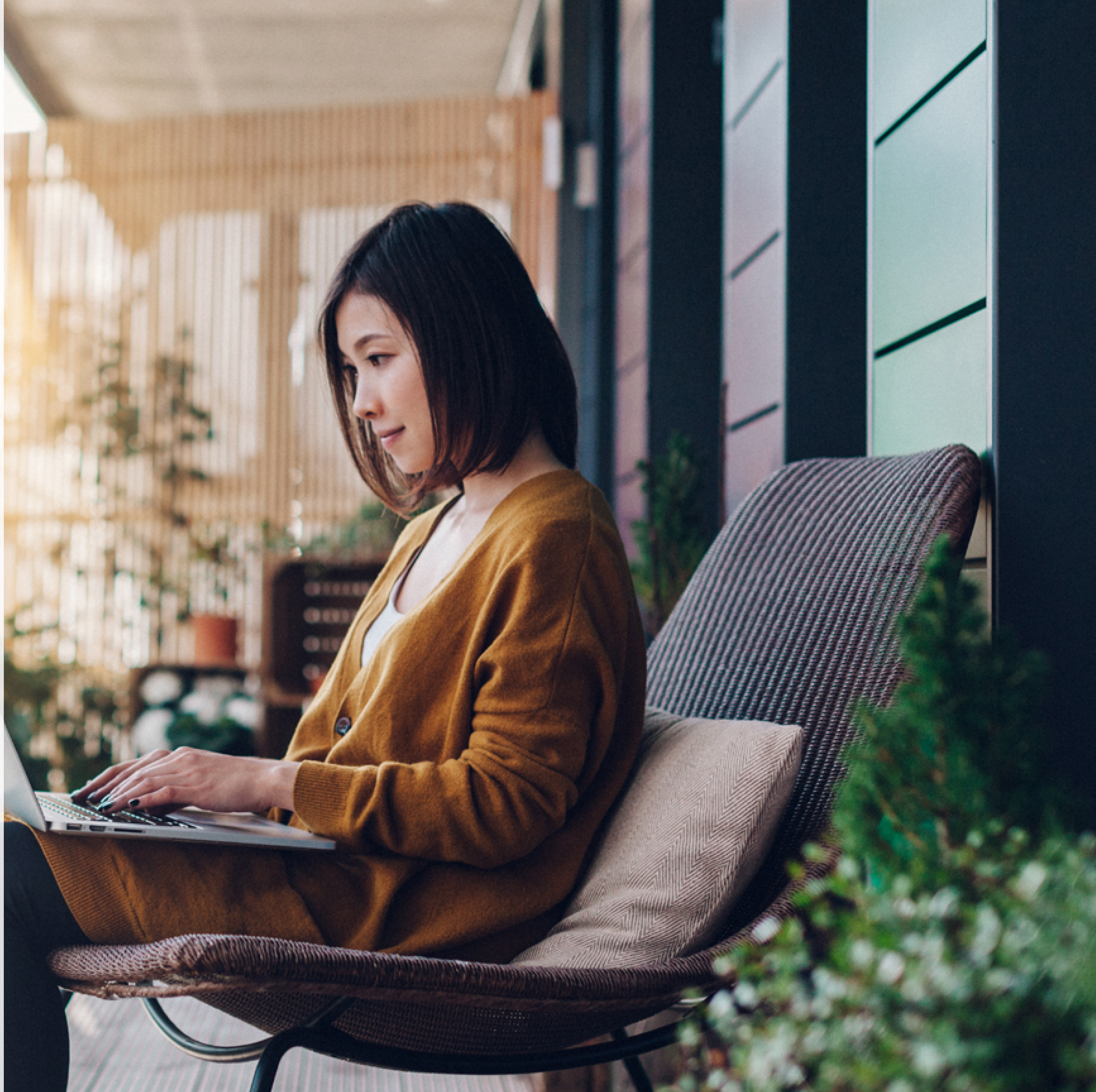
Contents

Introduction

The SECURE 2.0 Act of 2022 ("the Act" or "SECURE 2.0") introduced sweeping changes across the retirement plan landscape. Since its passage, the U.S. Departments of the Treasury and Labor have been hard at work writing rules and regulations related to the legislation.

We have summarized the key updates from the regulatory guidance issued following the enactment of SECURE 2.0 — and noted what plan sponsors should consider for each, what the effective dates are, and which are required or optional for plan sponsors to adopt for their plans.

Bank of America will provide any updates to these provisions as necessary and will work with you to make these changes to your plan.



	Summary	Regulatory guidance	Considerations for plan sponsors
Section 101 Expanding Automatic Enrollment Required Effective for plan years beginning after December 31, 2024	One of the key objectives of SECURE 2.0 is to increase worker participation and overall savings in retirement plans. Under the new law, companies with newly established 401(k) and 403(b) plans on or after December 29, 2022 will now be required to automatically enroll their employees into the plans and periodically increase their employees' plan contributions. Workers will continue to have the choice of opting out of contributions or defining their own contribution percentages. For the first year of eligibility, the percentage of compensation contributed by the employee must be between 3% and 10% upon being automatically enrolled in the plan. In each subsequent year, the contribution percentage must increase by 1%. These increases must continue until workers are contributing a minimum of 10% of their eligible compensation and a maximum of 15%. The new law does provide exceptions to automatic enrollment for small companies (those with 10 or fewer employees) and companies that have been in business for fewer than three years. It's important to note that plans in existence prior to December 29, 2022 are grandfathered and not affected by these new plan defaults.	IRS Notice 2024-2 provides the following guidance: **Clarification regarding when a plan is "established"** A plan (or deferral feature within the plan) is established on the date it's adopted, even if it becomes effective as of a later date. A plan that's established before December 29, 2022 is deemed a "pre-enactment qualified CODA" (that is, a grandfathered plan). **Impact of mergers and spinoffs on pre-enactment qualified CODA status** • *Merger of two pre-enactment qualified CODAs.* A merger of such two single-employer plans (that is, not an MEP or other similar arrangement) will not impact pre-enactment qualified CODA status. • *Merger of non-grandfathered plan with a pre-enactment qualified CODA.* The surviving plan will only be exempt from the mandate if the plan merger is a result of a 410(b)(6)(C) merger or acquisition transaction (for example, the employers are now part of the same controlled group), provided that (i) the grandfathered plan is designated as the surviving plan and (ii) the merger occurs by the end of the plan year following the year in which the corporate action occurred. • *In a Multiple Employer Plan (MEP),* each adopting employer is generally treated individually for purposes of the mandate. However, a pre-enactment qualified CODA that merges into an MEP that maintains a pre-enactment CODA won't lose its pre-enactment status. • *Spinoff from a pre-enactment qualified CODA.* The plan will maintain its exempt status.	While the mandate applies to plans established on or after December 29, 2022, the automatic enrollment provision isn't required to take effect until plan years beginning after December 31, 2024. Plan sponsors must consider the impact of a plan merger or spinoff to determine whether the automatic enrollment mandate applies to the surviving plan.

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Section 102 Increased Small Business Startup Credit Optional Effective for taxable years beginning after December 31, 2022	Current law offers a tax credit to a small business (up to 100 employees) that adopts a new qualified plan, which can apply for up to three years, equal to the lesser of (1) 50% of the employer's startup costs, or (2) as much as $5,000. SECURE 2.0 increases this credit to cover 100% (up from 50%) of administrative costs, up to $5,000 for the first three years of plans established by employers with up to 50 employees. It also clarifies (in Section 111) that small businesses joining a MEP are eligible for the credit. Lastly, it adds an employer contribution credit for small businesses (up to 100 employees) contributing either matching or nonelective contributions for a five-year period. The credit cannot exceed $1,000 per employee and is subject to complex reductions over the applicable period. The employer contribution credit is not available with respect to employees who have FICA wages in excess of $100,000 (adjusted for inflation) for the taxable year. In addition, the small business credits may not be available if the business is/was part of a controlled group of related entities.	Notice 2024-2 provides additional information regarding credit availability for newly established plans, including the following: • An eligible employer can receive both the enhanced startup credit and the employer contribution credit. • For purposes of the five-year period for employer contribution credits, a plan is established on the date the plan becomes effective; however, the sponsor may elect that the first year is the year immediately preceding the year in which the plan is effective. • Special rules apply if the number of employees exceeds the threshold to be deemed a small employer. Generally, the credit won't be available in subsequent taxable years if the threshold is surpassed. • Contributions with respect to a participant who does not have FICA wages (such as a self-employed individual or a partner) may be taken into account for purposes of determining employer contribution credits for the taxable year, even if the individual has earned income in excess of the $100,000 limitation.	See instructions for IRS Form 8881 at IRS.gov for additional information. Plan sponsors should work with their accountant or tax counsel for assistance with credit eligibility and filing requirements.

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Section 107 Increased Age for Required Minimum Distributions (RMDs) Required January 1, 2023	Tax-deferred retirement plans generally require account owners to begin taking distributions — and pay the corresponding deferred income taxes — during their lifetime. These mandatory distributions are referred to as required minimum distributions (RMDs). The deadline for commencing RMDs is known as the required beginning date (RBD). This deadline is intended to limit the amount of time assets can grow on a tax-deferred basis in the retirement account. However, with many workers choosing to retire later in life, more and more individuals are reaching their RBD while still working. Recognizing that forcing distributions from retirement accounts while many individuals are still working conflicts with the goal of encouraging saving for retirement, the first SECURE Act extended the RBD to April 1 of the year after the account owner turns 72. Previously, the age was 70½. Under SECURE 2.0, beginning in 2023, that age was increased to 73 (**Note:** Those who turned 72 during 2022 are covered by the "old rules" — that is, since they turned 72 in 2022, their first RMD is due for 2022). SECURE 2.0 also provides that beginning in 2033, the age will ultimately increase to 75. For those born in 1950 or earlier, there's no change. For those born from 1951 to 1959, RMDs commence at age 73; and, for those born 1960 or later, distributions commence at age 75.	IRS Notice 2023-54 provides transition relief and guidance relating to certain RMDs. Section 107 of the SECURE 2.0 Act changed the definition of RBD to reference the "applicable age" of the employee or IRA owner, which is either 73 or 75, depending on their date of birth. The Notice provides relief with respect to distributions from plans and IRAs that were mischaracterized as RMDs as a result of this change to the definition of RBD. Specifically, with respect to distributions made between January 1 and July 31 of 2023 to a plan participant born in 1951 (or to such a participant's spouse) that would have been an RMD but for the foregoing change to the RBD, the Notice provides the following relief: • *Indirect rollovers from employer plans.* The Notice extends the 60-day deadline for completing rollovers from employer plans with respect to any distributions described above. The new deadline was September 30, 2023. • *Indirect rollovers from IRAs.* The Notice provides IRA owners and surviving spouses with the same extension of the 60-day rollover deadline described above with respect to distributions from IRAs. The Notice also waives the one-rollover-per-year limit on IRA rollovers for any amount described above, meaning individuals get the benefit of the extension even if they previously rolled over other IRA distributions within the prior 12 months. However, any rollover of amounts described in the Notice will trigger the one-rollover-per-year limit for any subsequent IRA distributions that occur in the ensuing 12 months.	On July 19, 2024, the IRS and the Department of the Treasury issued final regulations relating to the RMD rules contained in the SECURE Act of 2019 and certain RMD provisions from SECURE 2.0. Proposed regulations relating to other SECURE 2.0 provisions were also released, which include clarification that the "applicable age" for individuals born in 1959 is age 73. This addresses ambiguity in Section 107 of SECURE 2.0 that made it unclear whether age 73 or 75 would apply for those born in 1959. Both the final and proposed RMD regulations apply for distribution calendar years beginning on or after January 1, 2025.

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Section 112 Small Business Credit for Special Military Spouse Eligibility and Vesting Rules Optional Effective for taxable years beginning after December 29, 2022	Eligible small business employers may take a new nonrefundable income tax credit if they incorporate certain eligibility requirements specific to military spouses eligible to join their plan. With frequent reassignments in the military, working spouses often don't stay in one job long enough to meet eligibility requirements. To be eligible for the credit, employers must establish an eligible defined contribution plan where military spouses (who are not highly compensated employees) are eligible to participate within two months of beginning employment, and in which military spouses who are eligible to participate (1) are immediately eligible to receive employer contributions in amounts not less than that received by similarly situated nonmilitary spouses with two years of service, and (2) have an immediate, nonforfeitable right to the accrued benefits derived from employer contributions under the plan. The credit is the sum of $200 for each such employee plus the amount of the contributions made to all eligible defined contribution plans by the employer with respect to the employee, up to a maximum of $300 for the taxable year for each such employee. The credit applies for up to three consecutive years, beginning with the first taxable year in which the individual begins participating in the plan.	Notice 2024-2 provides information regarding the military spouse credit, including the following: • Similar to other small employer credits, if the number of employees increases beyond the 100-employee threshold, the credit will no longer be available for such year. • The three-year credit period generally begins on the later of the date the plan is amended to conform with this provision and the date on which the military spouse began participating in the plan after it was amended.	See instructions for IRS Form 8881 at IRS.gov for additional information.

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Section 113 Small Financial Incentives for Employee Contributions Optional Effective for plan years beginning after December 29, 2022	Employers generally may not provide benefits conditioned on an employee contributing to a 401(k) or 403(b) plan, except for matching contributions. Prior to SECURE 2.0, this would prohibit employers from providing small gifts (for example, gift cards) as a financial incentive for their employees to contribute to a retirement plan. SECURE 2.0 provides an exemption for a “de minimis financial incentive” from the contingent benefit and prohibited transaction rules that otherwise would prohibit such gifts. The incentive cannot be paid from plan assets.	Notice 2024-2 provides the following information regarding de minimis financial incentives: • A “de minimis financial incentive” is one that doesn’t exceed $250 in value. The incentive can be structured in installments that are contingent on the employee continuing to defer, even if it crosses multiple plan years. • The incentive can only be offered to an employee who doesn’t have an election to defer as of the date the incentive is announced. • A de minimis financial incentive isn’t treated as a plan contribution for purposes of qualification rules under 401(a) and deductibility rules under 404(a). • The incentive is includible in the employee’s gross income and is subject to applicable withholding and reporting requirements for employment tax purposes unless an exception under the Code applies.	Since the incentive can only be offered to employees for whom no election to defer is already in effect, it would appear to preclude those who have been automatically enrolled in the plan. Industry advocates have requested that the IRS expand the eligible group to anyone who makes an affirmative deferral election, irrespective of whether they have one in place at the time the de minimis incentive is offered.

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Section 127 Emergency Savings Accounts Linked to Plan Optional Effective for plan years beginning after December 31, 2023	The Act creates a new plan design option referred to as a "pension-linked emergency savings account" (PLESA). Plan sponsors who choose to adopt this provision can include a designated account outside of their plan that would accept deferrals on a Roth basis, up to $2,500 for emergency savings purposes. All eligible distributions would be deemed to be qualified Roth distributions and, as such, non-taxable on distribution. Contributions must be invested in a principal preservation investment, and amounts may be withdrawn at any time without penalty (the Plan's QDIA may not necessarily satisfy this requirement). Participants must be allowed to withdraw all or a portion of their account at least once per calendar month. Auto enrollment is permitted up to 3% of compensation, and highly compensated employees aren't eligible to contribute to the accounts. There are no employer contributions permitted to the emergency savings account. If the plan offers matching contributions, the amount of the employee deferral into the emergency savings account will be considered for the match, but the matching contribution is made to the participant's account under the employer plan, like any other matching contribution, not into the designated emergency savings account.	**The Employee Benefits Security Administration (EBSA) has released guidance titled "FAQs: Pension-Linked Emergency Savings Account" with these key takeaways:** • All the protections under ERISA apply to PLESAs, irrespective of whether or not the employee participated in the retirement savings portion of the account. • Any non-highly compensated employees who have met the plan's eligibility requirements must be eligible to participate in the PLESA. • An employer may automatically enroll participants into the PLESA; however, it must be done pursuant to advance written notice with an opportunity to opt-out and withdraw their money at no charge. • While a plan cannot impose a minimum PLESA balance, the employer may establish administrative procedures that require elections be in whole dollar and whole percentage increments if such requirements are applied uniformly. • The balance in the PLESA may not exceed $2,500 (indexed for inflation). Plan sponsors have the flexibility to either include or exclude earnings on participant contributions when applying the limit. In addition, plan sponsors can impose a limit lower than the $2,500 limit; however, they can't impose an annual limit. • Participants don't have to demonstrate or certify the existence of an emergency or other need in order to take a withdrawal from the PLESA. • Contributions to the PLESA count toward the annual 402(g) limit. • A plan cannot charge a fee for the first four withdrawals in a plan year. However, reasonable fees or charges in connection with subsequent withdrawals can be charged. In addition, separate from the fees charge solely on the basis of a withdrawal, a plan can impose fees for the administration of the PLESA. • Initial and annual notices regarding the PLESA must be furnished to plan participants, and they may be combined with other required disclosures, according to ERISA rules. A model notice may be issued by the regulators. • Pension benefits statements under ERISA Section 105 or disclosures furnished under 29 CFR §2550.404(a)(5) are not required to address a plan's PLESA feature, provided that the plan administrator satisfies the notice requirements of ERISA Section 801(d)(3)(A) and (B). • The Department of Labor is working on PLESA reporting requirements for Form 5500. **The IRS has issued Notice 2024-22 to provide initial guidance with respect to anti-abuse rules with this key takeaway:** • The Treasury and the IRS permit (but do not require) reasonable measures to prevent the potential manipulation of PLESA matching contributions but have deemed the following to be unreasonable practices: – A forfeiture of matching contributions by reason of a withdrawal from the PLESA – Suspension of participant contributions on account of a withdrawal – Suspension of matching contributions to the defined contribution portion of the plan	Unfortunately, the IRS guidance was limited to anti-abuse measures. While the Q&A guidance from EBSA provides some useful information, it didn't address several key areas of administration and ultimately did little to allay concerns about complexity and resulting fiduciary exposure. Pending additional guidance, plan sponsors may still look to an existing emergency savings solution.

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Section 305 Expansion of Employee Plans Compliance Resolution System (EPCRS) Optional Effective December 29, 2022	The Act permits that, except as otherwise provided in guidance, generally all inadvertent plan failures (including certain loan failures) may be self-corrected under the IRS's Employee Plans Compliance Resolution System (EPCRS) without a submission to the IRS (other than egregious failures). The rule doesn't apply if (1) the IRS discovers the failure on audit and the employer hasn't, at that point, taken actions that demonstrate a specific commitment to correct the failure, or (2) the self-correction isn't completed within a reasonable period after such failure is identified. Additionally, the Act permits correction of certain SEP and SIMPLE IRA failures (other than certain IRA failures).	IRS Notice 2023-43 authorizes the immediate use of expanded self-correction options available under the EPCRS (including certain inadvertent failures that occurred prior to December 29, 2022) and provides interim rules that apply pending an updated Revenue Procedure. This notice lists nine categories of failures that cannot be self-corrected until the EPCRS is updated. Prior to an updated EPCRS, a failure generally will be treated as corrected within a reasonable period if it has been corrected by the last day of the 18th month following the date the failure is identified. An IRA custodian may be able to self-correct certain inadvertent failures after the EPCRS is updated, such as waivers of the excise tax on required minimum distributions and certain nonspouse beneficiary distributions.	The guidance is great news for plan sponsors, since they can begin utilizing the expanded self-correction options prior to issuance of the updated Revenue Procedure by the IRS.

	Summary	Regulatory guidance	Considerations for plan sponsors
Section 326 Penalty Tax Exemption for Terminally Ill Individuals Optional Effective for distributions made after December 29, 2022	Under the bill, an exception to the 10% early withdrawal tax applies in the case of a distribution made to an employee who is terminally ill on or after the date on which such employee has been certified by a physician as having a terminal illness. For purposes of this provision, "terminally ill individual" means an individual who has been certified by a physician as having an illness or physical condition that can reasonably be expected to result in death in 84 months or fewer after the date of the certification.	Notice 2024-2 provides clarification on certain aspects of this provision, including: • The Notice clarified that the exemption applies to distributions from 401(k), defined benefit and 403(b) plans, and Individual Retirement Accounts. • The term "physician" generally means a doctor of medicine or osteopathy who is legally authorized to practice medicine and surgery by the state in which the doctor performs such function or action. • The contents of the physician's written certification must include: – A statement that the illness can be expected to result in death in 84 months or less after the date of certification – A description of the evidence that was used to support the statement of illness – The name and contact info for the physician – The date the individual was examined and the date the certification was signed – A signature and an attestation confirming the examination and description • The certification must be made before the distribution is taken. • Generally, there is no dollar limit to the amount that may qualify. • A participant must have a distributable event (that is, hardship) or available funds for withdrawal. • There is a special three-year recontribution right (similar to the rules applicable to qualified birth and adoption distributions). • Self-certification is not permitted, even if the participant is a physician. • A plan isn't required to offer terminally ill individual distributions. However, an employee can treat other available distributions as a terminally ill distribution.	Participants who meet the criteria and have funds available for withdrawal may be eligible for the tax relief on their federal income tax return, even if the provision isn't offered under their workplace plan. Guidance is expected in the form of technical corrections to SECURE Act 2.0 that would permit distributions to terminally ill participants who have not had a distributable event.

	Summary	Regulatory guidance	Considerations for plan sponsors
Section 350 Safe Harbor Correction of Employee Elective Deferral Failures Optional Effective for errors after December 31, 2023	This provision allows for a grace period to correct, without penalty, reasonable errors in administering these automatic enrollment and automatic escalation features. Generally, errors must be corrected prior to 9½ months after the end of the plan year in which the mistakes were made.	Notice 2024-2 provides the following information: • This provision can be applied to any errors that have a deadline for correction after December 31, 2023. The deadline for correction is the date that the correct deferral election must begin — the earlier of the first paycheck due on or after the last day of the 9½ month period after the end of the plan year in which the error occurred or, if the employee notified the employer of the issue, the first paycheck made on or after the last day of the month following the month in which notification was made. • The correction must follow the process described in EPCRS Rev. Proc. 2021-30 (Appendix A, section .05(8)). • The correction can apply to participants who have terminated employment; however, the notice content may need to change for terminated participants, since they can no longer adjust their future deferrals to make up for the missed opportunity. • Any matching contribution relating to a missed deferral opportunity (adjusted for earnings) must be made within a reasonable period after the correct deferral election begins. A corrective match allocation made by the last day of the sixth month following the month in which correct deferrals begin (or, with respect to a terminated employee, would have begun but for the termination of employment) will be treated as reasonable. • For errors that began on or before December 31, 2023, the corrective match must be made by the end of the third plan year following the year in which the error occurred.	The main purpose of this provision is to make permanent a correction method under EPCRS that would have otherwise sunset. However, the subsequent guidance in Notice 2024-2 provides key clarifications with respect to the errors that are covered, applicability to terminated participants, and the deadline for funding corrective matching contributions
Section 501 Provisions Relating to Plan Amendments Required December 29, 2022	This provision allows plan amendments made pursuant to SECURE 2.0 to be adopted by the end of the 2025 plan year (the 2027 plan year in the case of collectively bargained and governmental plans) as long as the plan operates in accordance with such amendments as of the effective date of a legislative or regulatory requirement or amendment.	Notice 2024-02 extends the deadline for required and discretionary amendments to December 31, 2026 (2028 for collectively bargained plans and 2029 for governmental plans).	While the deadline to formally amend plan documents has been extended, sponsors must record meeting minutes and maintain other procedural/ administrative documents relating to optional and mandatory provisions. Plans will be granted anti-cutback relief if they operationally comply with changes made under SECURE 2.0; however, the relief won't apply if the amendments aren't adopted prior to the prescribed deadlines.

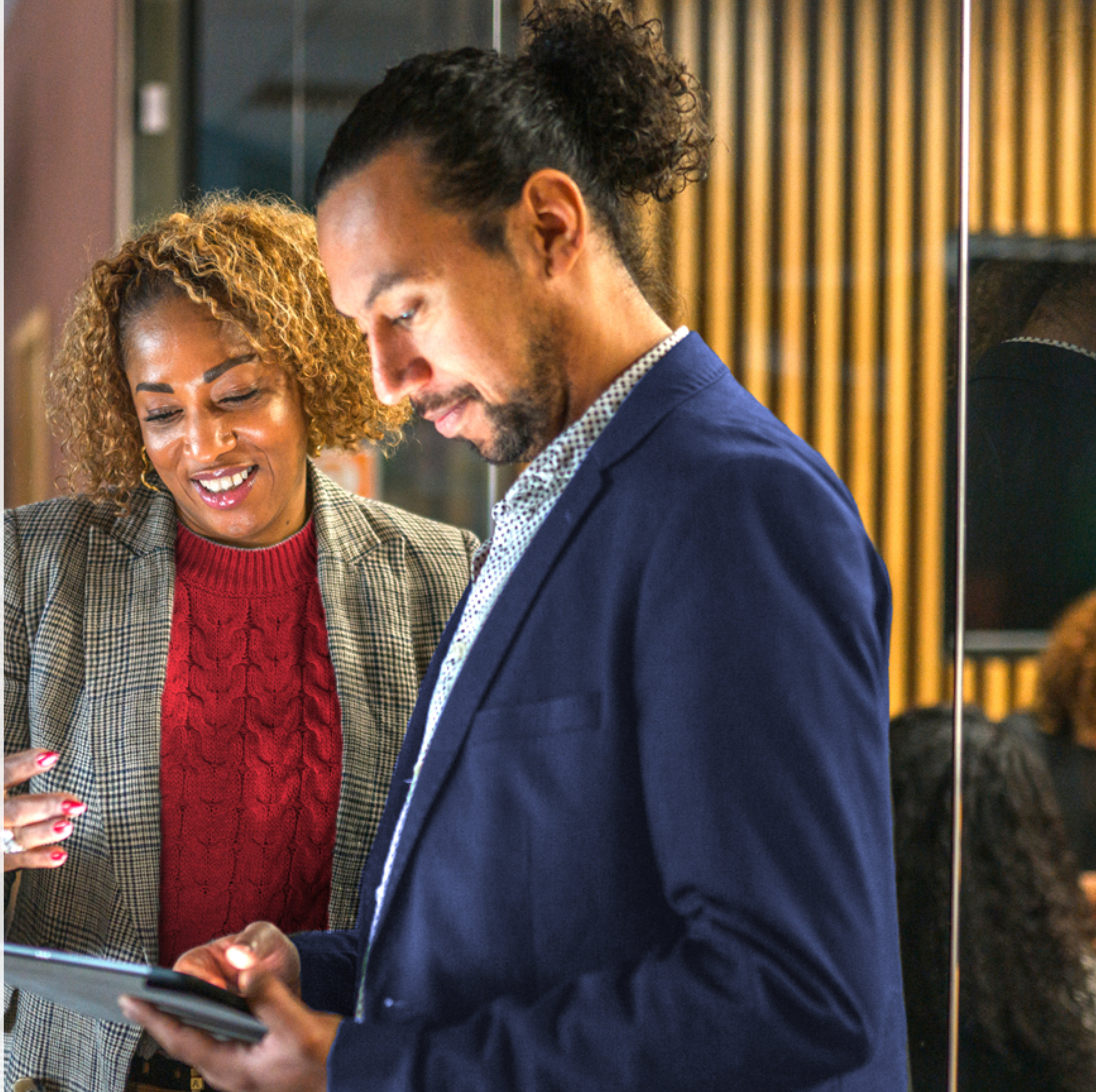
	Summary	Regulatory guidance	Considerations for plan sponsors
Section 603 Elective Deferrals Generally Limited to Regular Contribution Limit Required Effective for taxable years after December 31, 2023	Prior to SECURE 2.0, employees aged 50 and older who made catch-up contributions were permitted to designate that this additional contribution be made either on a tax-deferred basis or to a Roth account on a post-tax basis. SECURE 2.0 now requires that all catch-up contributions be made on an after-tax basis to a Roth retirement account. As a result, the catch-up contribution won't be excluded from the employee's income but will grow tax-free and can be withdrawn tax-free in the future, subject to Roth distribution rules. This change applies to 403(b) and 401(k) plans but not to a SEP or a SIMPLE IRA. There's an exception for employees with wages (as defined for FICA purposes) of \$145,000 or less, adjusted annually for inflation. The \$145,000 limit is based on the prior year's wages paid by the employer sponsoring the plan. Plans that don't currently permit Roth contributions may need to consider adding a Roth contribution option if they are to continue to permit catch-up contributions.	IRS Notice 2023-62 establishes an "administrative transition period" that effectively delays the required implementation of this rule until January 1, 2026. The Notice also asks for comments on the impact of a plan that offers catch-up contributions but doesn't otherwise have a Roth deferral program. Notice 2023-62 also announces that guidance will be issued to clarify open questions regarding: • The applicability of these rules to those who do not have FICA wages because the individual was a partner or self-employed. • The ability for a plan to use negative consent to change a deferral election from pre-tax to Roth upon reaching the annual limit • Aggregation of a participant's wages under a plan maintained by unrelated employers (including a multiple employer or multiemployer plan).	The two-year extension provides the necessary time for plan sponsors to make the appropriate plan changes with payroll vendors and service providers to comply with the new catch-up contributions requirements.

	Summary	Regulatory guidance	Considerations for plan sponsors
Section 604 Optional Treatment of Employer Contributions as Roth Optional Available for contributions made after December 29, 2022	Before the enactment of SECURE 2.0, all employer contributions were made on a pre-tax basis to employee accounts. This was the case even for matching contributions for employees contributing to a Roth account — the employee's contributions would go to the Roth account and the match would be made in a pre-tax account. Under the new law, plans may now give employees the option of designating that the employer matching and/or nonelective contributions be made as Roth contributions. Employer contributions made on a Roth basis would be considered taxable income to the employee. This provision applies to 401(k), 403(b) and eligible governmental plans.	Notice 2024-2 provides key clarifications, including the following: **Timing of election** The election must be made prior to the contribution being allocated to the account and must be irrevocable. The employer must allow a participant to make or change this designation at least once a year. **Amounts must be fully vested** A participant must be fully vested in that contribution source to be able to designate any of it as Roth. Only offering the option to participants who are fully vested won't result in benefits, rights and features issues under Code Section 401(a)(4) nondiscrimination rules. **Tax treatment, withholding and reporting requirements** • Designated Roth matching contributions and designated Roth nonelective contributions are not wages, as defined in Section 3401(a), for purposes of federal income tax withholding under Section 3402; however, these amounts are included in the participant's gross income for the taxable year in which the contribution is allocated to the individual's account, even if the designated Roth matching or nonelective contribution is deemed to have been made on the last day of the prior taxable year of the employer for deduction purposes. • Employees who designate a matching contribution or nonelective contribution as a Roth contribution may need to increase their withholding or make estimated tax payments to avoid an underpayment penalty. • Designated Roth matching and nonelective contributions under 401(k) and 403(b) plans are not treated as FICA and FUTA wages (unlike Roth salary deferrals which are subject to FICA and FUTA). Note such contributions under an eligible governmental plan may be subject to different employment tax treatment. • Amounts are reported via Form 1099-R, similar to an in-plan Roth, for the year in which the contributions are allocated to the account. The total amount of designated Roth matching contributions and designated Roth nonelective contributions that are allocated in that year are reported in boxes 1 and 2a of Form 1099-R, and code "G" is used in Box 7.	Coordination is needed among the employer, its payroll provider and the 401(k) record-keeper.

What's next?

The SECURE 2.0 Act covers multiple, complex changes to defined contribution plans, and more information is needed from regulators. Plan sponsors should expect additional guidance and rulemaking from the Department of the Treasury and the Department of Labor across a number of provisions, including:

- Additional final rules for changes impacting required minimum distributions (RMDs)
- Operational practices for employers that want to make matching contributions on qualified student loan repayments
- Guidance on the ability to consolidate certain defined contribution plan notices and to simplify disclosures to unenrolled participants
- An update to Revenue Procedure 2021-30 for changes impacting the Employee Plans Compliance Resolution System (EPCRS)



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- Internal Revenue Service at irs.gov
- U.S. Department of Labor at dol.gov
- Employee Benefits Security Administration at dol.gov/agencies/ebsa

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