SECURE 2.0

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presented by

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SECURE 2.0 Act of 2022, part of Public Law 117-328, the Consolidated Appropriations Act:

- Allows police, fire firefighters, paramedics and emergency medical technicians to continue to exclude service-connected disability payments from income after reaching retirement age effective 2027.
- Allows certain defects in conservation easements to be corrected for contributions made after December 29, 2022.

- Requires most employers to automatically enroll participants in new 401(k) plans with 3 percent deferral upon eligibility effective 2025 plan years (the deferral rises by 1 percent each year to at least 10 percent but not more than 15 percent although employees can opt out or modify the percentage); this provision is not applicable to businesses with less than 11 employees, those in business for less than 3 years, SIMPLE plans, church plans, governmental plans and those created before December 30, 2022.

- Increases the credit effective 2023 tax years for small employer plan (including SEP and SIMPLE) startup costs to 100 percent of the first $5,000 of costs in each of the first three years for those with less than 50 employees with, except for defined benefit plans, an additional credit of a percentage of employer contributions up to $1,000 per employee (not considering employees earning more than $100,000 indexed); the additional credit is phased out between 50 and 100 employees and the applicable percentage is 100 percent for years one and two and drops by 25 percent in years three, four and five.

- Replaces the nonrefundable credit for lower income individuals who make contributions to retirement plans, IRAs and ABLE accounts effective 2027 with a federal match of 50 percent of retirement plan or IRA contributions of up to $2,000 per individual phased out subject to indexing for those with modified adjusted gross income between $41,000 and $71,000 for joint filers, $20,500 and $35,500 for single or separate filers and $30,750 to $53,250 for heads of household; dependents and non-dependent students are not eligible.

- Allows multiple employer 403(b) plans effective 2023 plan years.
- Changes the required beginning date for retirement plans (except in the case of the current employer plan for those still working) and IRAs from 72 to 73 for those not yet 72 as of December 31, 2022; the age jumps to 75 in 2033.
- Indexes the $1,000 IRA “catch-up” for individuals age 50 and above effective 2024.
- Increases the employer retirement plan “catch-up” amount effective 2025 tax years to the greater of $10,000 ($5,000 in a SIMPLE plan) indexed or 50 percent of the regular catch-up amount for those 60-63 within the taxable year.

- Treats student loan repayments of higher education expenses as if they were elective deferrals for purpose of employer matches effective 2024 plan years; discrimination tests may be separated for those utilizing and not utilizing loans for purpose of a match.
- Allows small employers joining a multi-employer plan after its formation to take the startup tax credit for three years from joining retroactive to 2020 tax years.

- Gives a general business tax credit effective 2023 tax years of up to $500 per eligible non-highly compensated employee for up to three years to smaller employers (no more than 100 employees earning $5,000 or more in the preceding year) with defined contribution plans if they make military spouses eligible for participation within two months of start with eligibility for matching or mandatory contributions as if they had two years of service and immediate vesting in all contributions.
- Allows an employer to provide immediate de minimis financial incentives such as a low dollar gift card to encourage employees to participate in a 401(k) or 403(b) plan effective 2023 tax years; the incentive may not be from plan assets.

- Permits the deferral of gain on up to ten percent of the amount realized on sale of stock by an S corporation to an ESOP effective for sales after 2027.
- Allows one emergency withdrawal per year of up to $1,000 from a retirement plan or IRA effective 2024 with no more permitted withdrawals during the three-year repayment period until repaid or new employer and/or employee contributions exceed the amount of the borrowing.
- Enables employers to make additional contributions to a SIMPLE Plan effective 2024 beyond 2 percent of compensation (or 3 percent of compensation just for those who make elective deferrals) in a uniform manner up to the lesser of 10 percent of compensation or $5,000 indexed.

- Raises the SIMPLE IRA catch-up contribution at age 50 by 10 percent effective 2024 in the case of an employer with no more than 25 employees; this would apply where employers have 26-100 employees if the employer matches at 4 percent or contributes 3 percent for all employees.
- Allows household employers to create SEPs for domestic employees effective 2023.
- Creates a starter 401(k) plan and a safe harbor 403(b) plan with IRA-type limits for employers with no retirement plan effective 2024 plan years; default elective deferrals would be between 3 and 15 percent inclusive.

- Cuts from three to two years the wait period for participation in a 401(k) plan where the employee works 500 but not 1,000 hours in a year effective 2025 plan years; the part-time rule is extended to 403(b) plans.
- Allows tax-free rollovers from 529 plans to Roth IRAs effective 2024 by beneficiaries up to the Roth Contribution limit where the account has been open for more than 15 years; the maximum lifetime withdrawal is $35,000.
- Permits employers with defined contribution plans to offer their non-highly compensated employees a linked emergency savings account on a Roth-type basis up to $2,500 effective 2024 plan years invested in offerings by a federal or state institution with four withdrawals permitted annually without employer charge.

- Liberalizes the ability of life annuities in qualified plans and IRAs to offer certain guaranteed increases effective 2022.
- Allows combining as well as bifurcating in determining minimum distributions when a retirement account holds both an annuity and other assets, effective December 29, 2022.
- Allows overpayments to a retiree to be forgiven and, if not, repayment over ten years with no more than a 10 percent reduction in normal payments, effective December 29, 2022.

- Reduces the excise tax effective 2023 for failure to take a minimum distribution from 50 to 25 percent and cuts it further to 10 percent for IRAs if corrected by the earlier of a Deficiency Notice, assessment or two years after the end of the applicable year.
- Requires the Department of Labor within two years from enactment to create a national database of unclaimed retirement plan benefits.
- Increases the amount up to which employers can distribute departed employee balances in a retirement plan to an IRA in the employee's name from $5,000 to $7,000 effective 2024.

- Upon guidance by December 29, 2024, allows more types of errors in retirement plan and IRA administration to be self-corrected.
- Indexes the $100,000 annual charitable donation from an IRA effective 2024 and permits a one-time payment of up to $50,000 indexed through charitable gift annuities, charitable remainder annuity trusts and charitable remainder unitrusts effective 2023.
- Permits penalty-free distributions from employer plans and IRAs within 180 days of up to $22,000 effective January 26, 2021 in the case of a federal declared disaster affecting the individual with income picked up over three years in the absence of repayment; the maximum borrowing amount is doubled to $100,000 with delay permitted in payback of existing loans.

- Eliminates the penalty on withdrawal of excess contributions to an IRA including the deemed earnings retroactive for open periods.
- Allows defined contribution plans to distribute up to $2,500 indexed penalty-free in the case of "high quality" coverage per year for the payment of premiums on long term care contracts effective for distributions after December 29, 2025.
- Permits retired private sector fire fighters like counterparts in the public sector to be eligible at age 50 instead of 55 to take retirement plan distributions without penalty effective December 30, 2022.

- Allows employers to rely on employee certification of hardship in absence of actual knowledge to the contrary, effective 2023 plan years.
- Creates a 3-year statute of limitations on minimum distribution failures and a 6-year statute on excess contributions effective December 29, 2022, measured in each case from the date of filing Form 1040 as opposed to an unlimited statute if Form 5329 is not filed.
- Permits victims of abuse by a spouse or domestic partner within one year of an incident to withdraw penalty-free the lesser of $10,000 indexed or 50 percent of the vested interest from a retirement plan or IRA with repayment permitted within three years; the provision is effective in 2024.

- Allows plan amendments increasing participant benefits to be made until the extended due date of the tax return effective 2024 plan years.
- Permits the owner of unincorporated businesses with no employees to make elective deferrals for the initial year until the original due date of the return effective 2023 tax years.
- Clarifies that an IRA engaging in a prohibited transaction does not disqualify other IRAs of the individual, effective 2023.
- Eliminates the requirement of minimum distributions from a Roth 401(k) prior to death of the account holder effective 2024.

- Allows a terminally ill employee (death expected within 84 months) after December 29, 2022, to receive early distributions from a qualified employer plan with repayment permitted.
- Permits a surviving spouse as designated beneficiary to be treated as the employee, effective 2024.
- Makes indefinite by law the current administrative grace on employer errors on enrollment; the law takes effect after December 31, 2023, when the administrative relief expires and allows corrections within 9½ months of the end of the plan year.
- Requires plans to be amended to reflect SECURE 2.0 as well as other prior legislation including the SECURE Act and CARES Act by the end of 2025 plan years.
- Permits SIMPLE IRAs to accept Roth contributions effective 2023 years.

- Parallels the 403(b) hardship rules to those for 401(k) allowing all account monies to be used for hardship withdrawals, effective 2024 plan years.
- Requires catch-up elective deferrals for those with compensation in excess of $145,000 indexed effective 2024 to be on a Roth basis.
- Allows employer matches and employer nonelective contributions to be handled on a Roth basis at the election of the employee effective December 29, 2022.
- Extends for seven additional years a provision scheduled to expire after 2025 that allows deferred benefit plans to use assets from an overfunded plan to pay retiree health and life insurance benefits; the transfer must be no more than 1.75 percent of plan assets and the plan must be at least 110 percent funded.

The End