SHORE TOMPKINS
ACTUARIAL RESOURCES, LLC

PLAN SPONSOR QUARTERLY UPDATE

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What's New In Washington: Legislative Update

Though there's certainly nothing to rival SECURE 2.0, there are a number of retirement-related bills winding their way through Congress.

- **Technical Corrections for SECURE 2.0:** The only bill likely to pass this year is a bill to make several corrections to provisions of SECURE 2.0. The provision most likely to impact employers is the fix to the higher catch-up limit for ages 60, 61, and 62 that goes into effect for 2025. The bill would correct the special catch-up limit to be 150% regular deferral limit for 2025 (not 2024).
- **Progress for 403(b) Plans:** In early March, the House passed the **Retirement Fairness for Charities and Education Institutions Act**, which permits 403(b) plans to invest in collective investment trusts. This is a big step forward for 403(b) plans! The act — part of the **Expanding Access to Capital Act of 2023** — is now with the Senate; one step closer to enactment.
- **Women's Retirement Protection Act.** Though variations of this bill have been introduced in several prior sessions, the latest version of this bill was introduced in the Senate in July 2023. It is currently with the Senate Committee on Health, Education, Labor, and Pensions (the HELP Committee). If enacted in its current form, the bill would require spousal consent of nearly all distributions from defined contribution plans (including 401(k) plans).
- **Anti-ESG Bills.** There are currently at least two bills in the House that address ESG (environmental, social, and governance) factors in retirement plan investing. The first, the **No Discrimination in My Benefits Act**, would amend ERISA Section 404(a)(1) to prohibit the consideration of "race, color, religion, sex, or national origin" in "selecting, monitoring, and retaining any fiduciary, counsel, employee, or service provider of the plan." The second, the **RETIRE Act**, would amend ERISA Section 404(a) to require that fiduciaries make investment decisions based solely on "pecuniary" factors (mirroring now-rescinded Trump-era ESG guidance).
- **Senate Hearing on Retirement Savings:** On February 28th, the Senate HELP Committee held a hearing titled "**Taking a Serious Look at the Retirement Crisis in America: What Can We Do to Expand Defined Benefit Pension Plans for Workers?**" While the title suggests the hearing would be focused on pension plans, they heard testimony on the current retirement system more broadly. Unsurprisingly, there was debate about the **Retirement Savings for Americans Act (RSAA)** — a Senate bill that would, among other things, create a federal government retirement plan in which workers who do not have a plan at work would be automatically enrolled and could receive a match that is more generous than the Saver's Match available to those with an employer plan. Opponents of RSAA argue that this would incentivize employers to stop providing retirement plans and shift the cost of employees' retirement to the federal government. This debate is a preview of the continuing discussion on how to expand the number of Americans who can save at work and how to improve the retirement outcomes of all Americans.

These changes haven't occurred yet — but plenty on the horizon! Now is a great time to take stock of the new legislative changes in SECURE 2.0 to ensure you're ready when the next big retirement plan legislation passes.

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Best Practices: SECURE 2.0 Grab Bag Highlights

The IRS recently released long-awaited guidance under SECURE 2.0 in the form of a "grab bag" notice — **Notice 2024-02**. This article summarizes a number of the higher interest items addressed in the notice.

- **Amendment effective dates:** Amendments related to SECURE 2.0 — including those related to both required and discretionary plan changes—must be adopted by the following dates.

Qualified Plans	• Nongovernmental plans – December 31, 2026. • Applicable collectively bargained plans – December 31, 2028. • Governmental plans – December 31, 2029.
457(b) Plans	• Tax exempt nongovernmental plans have **no extension** – December 31, 2025. • Governmental plans – generally December 31, 2029.
403(b) Plans	• Non-public school plans – December 31, 2026. • Applicable collectively bargained plans – December 31, 2028. • Public school plans – December 31, 2029.
IRAs	• Generally December 31, 2026.

- **Financial Incentives for Participation:** As you may remember from a previous newsletter, SECURE 2.0 permits plan sponsors to provide de minimis financial incentives to participants to encourage plan participation. The notice provides some additional guidance. It clarifies that incentives of $250 or less will be "de minimis." This is a cumulative limit, and can be provided in installments contingent on the employee's continued deferral (for example, a plan sponsor could provide a $100 incentive at the time of enrollment and a $50 incentive for each of the following three years if the participant is still deferring). However, the financial incentive may be offered only to employees that would be new plan participants—meaning, only to employees who do not have an existing election to defer. Therefore, the incentives cannot be used for participants who have been automatically enrolled or to incentivize participants to increase existing elections. Finally, the notice confirms the incentives are subject to the same tax, withholding, and reporting requirements that would apply to any other employer-provided fringe benefit.

- **Terminal Illness Distributions:** The notice confirmed that terminal illness distributions are *not* separate distribution rights — meaning that a participant who qualifies must also be eligible for another permissible distribution from the plan. When processing distribution requests, plans are not required to determine whether the individual applying for the distribution also qualifies as terminally ill. This means, for example, that if a participant takes a hardship distribution from the plan, the plan administrator does not have the duty to inquire as to whether the participant is terminally ill and therefore exempt from the 10% tax on that distribution. The individual may claim the exemption from the 10% penalty by reporting their distribution as a terminally ill distribution on their Form 1040.

- **Small Business Tax Credit:** The notice confirms that the new employer contributions credit is separate from the startup costs credit — and, good news, an employer may be eligible for both! An employer that is eligible for credits before 2023 may be eligible for the increased startup costs credit and/or the employer contributions credit for any remaining time in the applicable credit period. The notice also confirms that individuals who have earned income instead of wages — typically individuals like sole proprietors and partners — *can* be considered for the employer contributions credit, even if they have earned income or other remuneration in excess of the wage limit.

  The notice clarifies that eligibility for both of the credits requires the employer to be eligible in the year of plan adoption. This means that a reduction in the number of employees will not make an employer eligible for credits if the employer was ineligible for credits in the plan's first year. Additionally, for the employer contributions credit, employer contributions are taken into account in the taxable year in which a deduction under Code Section 404(a) would apply (not the year in which the contribution is made).

- **Military Spouse Credit:** SECURE 2.0 provided an additional tax credit for certain employers that provide military spouses with retirement benefits. The notice clarifies that an employer may only claim the credit for years in which it qualifies as a small employer. Employers that qualify may claim credit for a military spouse whose three-year credit period began before enactment of SECURE 2.0.

Now is a great time to update processes and ensure all relevant team members are aware of these changes and ready for any potential issues and/or opportunities.

Hot Topic:
SECURE 2.0 Automatic Enrollment

SECURE 2.0 continues to be a hot topic as the provisions become effective and we get additional insights and guidance from the regulating agencies. Our focus on SECURE 2.0 continues with a look at SECURE 2.0's automatic enrollment provisions.

Brief Refresher: SECURE 2.0 provides that 401(k) and 403(b) plans established after December 29, 2022 must automatically enroll employees who satisfy the plan's eligibility provisions. Participants must be automatically enrolled at a contribution rate of at least 3% — but no more than 10% — of their pay. Plans must then provide for automatic escalation of the deferral percentage by one percentage point each year, up to at least 10% (and no more than 15%). Employees must be given the opportunity to opt out, of course, and also must be given the ability to withdraw those automatic deferrals in the 90-day period after deferrals begin. Automatic enrollment is required for these new plans beginning with the **2025 plan year**. The rule applies only to new plans (i.e., not to plans established before December 29, 2022) and does not apply to: (1) businesses with fewer than 10 employees, (2) businesses that are less than three years old, (3) church plans, and (4) governmental plans.

The New Insights: **Notice 2024-02**, the IRS's "SECURE 2.0 Grab Bag" provided new insights into the working of this rule. It provided the following clarifications regarding the automatic enrollment mandate:

- 401(k) Plans are considered "established" when the plan terms providing for 401(k) deferrals are initially adopted — even if the effective date of the 401(k) feature is later. For example, if an employer adopted a new plan on December 1, 2022, with the 401(k) feature effective on January 1, 2023, that plan was "established" before December 29, 2022 and therefore is exempt from the mandate.

- For Section 403(b) plans, on the other hand, a plan is exempt from the automatic enrollment mandate if the plan itself was established before December 29, 2022, regardless of when the deferral feature was added.

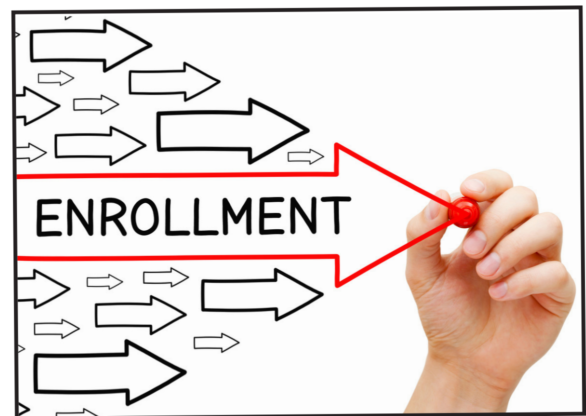
- If a plan that is subject to the new automatic enrollment rule merges with a 401(k) plan that is not subject to the new rule, the entire post-merger plan *will be* subject to the new rule *unless* certain requirements are met (generally that the merger meet certain requirements and occur shortly after a corporate transaction (merger, acquisition, etc.)).

- Plans that are spun-off from other plans will retain the characteristic of the original plan — meaning that a spin-off will not be treated as a plan established after December 29, 2022 if the original plan was established before that date.

How to Correct Mistakes? The notice also provided insights regarding how to correct deferral errors for plans with automatic enrollment features. SECURE 2.0 expanded the favorable correction method already available under EPCRS for correcting deferrals in plans with automatic enrollment to permit the 0% QNEC for deferrals to apply for terminated employees as well (recall that 100% of any associated match would still be owed, of course). The notice provides several clarifications:

- This expansion applies to errors for which the deadline for correction is after 2023 (which generally means it generally is available for errors that occur in 2023 or later).

- Deposit of any missed matching contribution generally must be made by the last day of the 6th month after correct deferrals begin.



Now is a great time to consider how automatic enrollment will be implemented and to update procedures for those plans that already use automatic enrollment. Your TPA partner can help you understand and analyze these provisions and how they will impact plan operations.