

Client Advocate Alert January 2023

SECURE ACT 2.0 What do you need to know now?

SECURE 2.0 Act of 2022, was enacted Dec. 29, 2022, as part of the Consolidated Appropriations Act, 2023 (P.L. 117-328). It is one of the most comprehensive pieces of legislation to impact retirement plans such as 401(k) plans. There are 92 provisions with various implementation dates up to the year 2032. Many impact all plans, some only new plans, some smaller size and others large plans. The focus of this Alert is on the Kidder client base and what is effective retroactively through 2027. Below is a table providing descriptions and effective dates for those key provisions affecting Kidder clients. Note that the chart is organized in the order the provisions become effective. In addition, **PYB stands for “plan years beginning,”** and **TYB stands for “taxable years beginning.”** Please note not all provisions are included and information is from resources deemed reliable, including the National Association of Plan Advisors (NAPA).

SECURE 2.0 Section	Provision	Description	General Effective Date
Provisions Starting in 2022			
301	EPCRS: Recovery of Retirement Plan Overpayments	Restricts plan sponsors from recovering certain excess payments from a participant after a three-year period when the individual did not cause the overpayment.	2022
305	EPCRS: Expansion	Expands EPCRS to allow self-correction of inadvertent significant plan errors without deadline (as long as before examination and within a reasonable period after discovery). Self-corrected loans treated as meeting requirements of VFCP. DOL may impose reporting. Waiver of 60-day	2022

SECURE 2.0 Section	Provision	Description	General Effective Date
		rollover for reasons beyond control of account owner.	
326	Distributions: Terminally Ill Exemption	Provides an exception to the 10% early distribution tax for distribution to a terminally ill individual. Must provide evidence required by plan administrator. May be repaid.	2022
604	Optional Treatment of ER Contributions as Roth contributions	401(a) plan, 403(b) plan, or a governmental 457(b) plan may permit an employee to designate matching or nonelective contributions as designated Roth contributions.	2022
Provisions Starting in 2023			
107	RMDs: New Required Beginning Dates	The required beginning date for required minimum distributions (RMDs) is age 73 beginning in 2023, and age 75 beginning in 2033. Hard cut-off; based on birthday (age 72 before 2023 = age 72; turn age 73 before 2033 = age 73; age 74 after 2032 = age 75).	2023
201	RMDs: Remove RMD Requirements for Certain Life Annuities	Allows individuals to satisfy the required minimum distribution (RMD) requirements by purchasing a fixed annuity with a circumscribed set of features, such as increasing no more than 5% per year or providing for a death benefit equal to the amounts paid for the annuity minus prior payments.	2023
302	RMDs: Reduction in Retirement Plan Excise Taxes	Reduces the excise tax for failure to take a required minimum distribution (RMD) to 25% from 50%, and further reduces the excise tax to 10% for taxpayers who take the required RMD before an IRS audit or (if earlier) the second year after the year in which the excise tax is imposed.	2023

SECURE 2.0 Section	Provision	Description	General Effective Date
113	401(k)s: Small Immediate Financial Incentives for Contributing to a Retirement Plan	Allows de minimis financial incentives in 401(k)s and 403(b)s for employees "who elect to have [deferrals made]." Cannot be paid for by the plan. De minimis not defined.	2023, PYB
312	Distributions: EE Certification of Deemed Hardship Conditions	In determining if a distribution is due to an employee hardship, plan administrator of a 401(k), 403(b), or 457(b) plan may rely on EE certifying the distribution is due to an eligible hardship/emergency, not in excess of amount needed, and no alternative means to satisfy need. Treasury may restrict in regulations for actual knowledge.	2023, PYB
317	401(k): Retroactive First-year Elective Deferrals for Sole Proprietors	Sole owner of an unincorporated trade or business, who is the only employee of such trade or business, may treat any elective deferral to a 401(k) plan made before the tax return due date (determined without regard to any extensions) as having been made before the end of the plan's first plan year. Applies only to the first plan year in which the section 401(k) plan is established.	2023, PYB
320	R&D: Eliminate Plan Requirements for Unenrolled Participants	Allows plans to provide much more limited information to employees who are not contributing to a plan and that have no balance in the plan. Must have provided an SPD, any required eligibility notices, and an annual notice.	2023, PYB
348	DB: Cash Balance Testing	For 411(b) accrual rule tests, may use a reasonable projection of interest crediting rates; capped at 6%.	2023, PYB
102	Tax Credit: Small Employer Pension Plan Start-up Credit Modification	Establishes a new credit and expands an existing credit. Startup credit increased to 100% for companies with 50 or fewer employees. The existing cap of \$5,000 per employer would be	2023, TYB

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		retained. The new credit offsets up to \$1,000 of employer contributions per employee in the first year, phased down gradually over 5 years. Applies to companies with 100 or fewer employees, however, it is phased out for those with more than 50 employees. No credit for contributions to any employee making more than \$100k (indexed after 2023). NOTE: no deduction for employer contributions qualifying for credit.	
Provisions Starting in 2024			
115	Distributions: Personal Emergency	One distribution would be permissible per year of up to \$1,000 (or account in excess of \$1,000 if less), with the OPTION to repay the distribution within 3 years. No further emergency distribution would be permissible during the 3-year repayment period unless recontribution occurs. Exemption from 10% penalty. May rely on participant certification absent actual knowledge.	2024
120	Distributions: Auto-Portability	Prohibited transaction exemption (PTE) for service provider providing automatic portability services, such as automatic transfer of a participant's default IRA (established in connection with a distribution from a former employer's plan) into the participant's new employer's retirement plan, unless the participant elects otherwise.	2024
303	Retirement Savings Lost and Found	Requires the DOL to establish an online searchable database with information on the location of unclaimed vested benefits of missing, lost, and non-responsive participants and beneficiaries in ERISA plans. Information reporting required for plan years beginning at least 2 years after enactment.	2024

SECURE 2.0 Section	Provision	Description	General Effective Date
304	Distributions: Cash-out Limit	Increases limit from \$5,000 to \$7,000.	2024
314	Distributions: Penalty-free Withdrawals for Domestic Abuse Victims	Plans may permit withdrawal in the case of an eligible distribution to a domestic abuse victim. Lesser of \$10,000 (indexed) or 50% of balance. Applies to plans not subject to Section 417. Withdrawal is exempt from 10% penalty. May be recontributed to applicable eligible retirement plans, subject to certain requirements.	2024
323	Distributions: Substantially Equal Periodic Payments	Clarification of substantially equal periodic payment rule. The exception from the 10% early distribution tax for substantially equal periodic payments will continue to apply if the case of a rollover of the account, an exchange of an annuity providing the payments, or an annuity that satisfies the required minimum distribution rules. No inference on rules prior to enactment.	2024
327	RMDs: Surviving Spouse Elections	Surviving spouse election to be treated as employee. Allows a surviving spouse to elect to be treated as the deceased employee for purposes of RMDs.	2024
350	EPCRS: Safe Harbor for Corrections of Employee Elective Deferral Failures	Allows employers to correct inadvertent auto-enrollment errors within 9½ months after the end of the year in which the error occurs without making up missed deferrals.	2024
110	Student Loan Matching Program	Permits employers to match student loan payments under 401(k), 403(b), SIMPLE, and 457(b) plan as if those payments were elective deferrals. May rely on EE certification re: payment amount. * ER contribution treated as a match. * Can test ADP separately for those receiving loan match (repayment not treated as deferral).	2024, PYB

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121	Starter 401(k)	Permits an employer that does not sponsor a retirement plan to offer a starter 401(k) plan (or safe harbor 403(b) plan). Requires that all employees be default enrolled in the plan at a 3% to 15% of compensation deferral rate. Could exclude union, non-resident aliens, and age/service less than statutory minimum. No employer contributions permitted. The annual deferral limit is \$6,000 with an additional \$1,000 in catch-up contributions beginning at age 50. Indexed after 2024. No ADP or top-heavy testing required.	2024, PYB
127	Emergency Savings Accounts	Employers may offer NHCEs pension-linked (despite wording, this applies to defined contribution plans) emergency savings accounts and may automatically opt employees into these accounts at no more than 3% of their salary. Accounts capped at \$2,500 (or lower as set by the employer). Contributions are made post-tax and treated as elective deferrals for purposes of retirement matching contributions. Once cap is reached, the contributions may be stopped or continue as Roth deferrals. First 4 withdrawals may not be subject to fees. May subject account to "reasonable restrictions." If plan matches deferrals, must count contributions to ESA in same way for purposes of match. At termination, may take distribution or roll into Roth.	2024, PYB
310	Top Heavy: Modification for EEs Who Don't Meet Age and Service Requirements	Employees who do not meet the minimum age and service requirements under the Code may be ignored in determining whether plan satisfies the top-heavy minimum contribution requirement.	2024, PYB
316	Plan Amendments: Allow More Time to Add Discretionary	May amend plan to increase benefits accrued under the plan as of any date in the preceding plan year (other than increasing the amount of	2024, PYB

SECURE 2.0 Section	Provision	Description	General Effective Date
	Plan Amendments to Increase Benefits	matching contributions) as long as it would not otherwise cause the plan to fail to meet any of qualification requirements and the amendment is adopted before the time prescribed by law for filing the return of the employer for a taxable year (including extensions) during which the amendment is effective.	
332	SIMPLE: Adopt 401(k) Mid-Year	Employers allowed to replace simple retirement accounts with safe harbor 401(k) plans during a year. Allows an employer to replace a Simple IRA plan with a Simple 401(k) plan or other 401(k) plan that requires mandatory employer contributions during a plan year. Limits pro-rated based on days in effect. Rollovers into 401(a) or 403(b) plan not subject to 2-year penalty tax.	2024, PYB
325	RMDs: Roth Accounts	Roth RMD parity with IRAs. No pre-death RMDs from Roth accounts in qualified plans (which is currently the rule only for Roth IRAs).	2024, TYB
603	Catch-up Contributions: Required to Be Roth	Catch-ups under a 401(k), 403(b) plan, or governmental 457(b) plan must be designated Roth contributions for Participants with > \$145k (indexed) in wages in prior year (and <= \$145k must have Roth option for catch ups). Treasury may issue regulations re: changing election if comp is determined to exceed threshold after election is made. Silent on recharacterization.	2024, TYB
Provisions Starting in 2025			
501	Plan Amendments to Conform with SECURE 2.0	This provision allows plan amendments made pursuant to this bill to be made by the end of 2025 as long as the plan operates in accordance with such amendments as of the effective date of a bill requirement or amendment. Also extends SECURE 1.0 and CARES.	2025, Dec 31

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101	Automatic Enrollment: Required	All new 401(k) and 403(b) plans adopted after 12/29/22 except businesses with fewer than 10 employees, new businesses less than 3 years old, and churches and governments -- must begin by 1/01/25 to automatically enroll participants at 3%-10% and increase the rate by one percent per year to at least 10%, but no more than 15%. Employees would have at least 90 days to opt out and take a distribution of any automatic deferrals. Must have Eligible Automatic Contribution Arrangements (EACAs) withdrawal provision. Does not apply to SIMPLE plans but does apply to adoption of a MEP after 12/29/22 (based on employers adoption, not effective date of MEP).	2025, PYB
125	Long-Term Part-Time (LTPT) Worker Definition Modification	Requires part-time workers who work for at least 500 hours per year for two years to be eligible to make employee contributions to an employer's defined contribution retirement plan. Adds provision to ERISA, covering 403(b) plans. Such provision ignores service for vesting and eligibility prior to 2023. Changes 401(k) provision, to exclude vesting service prior to 2021. Effective 2025 PY, but vesting change and top heavy exemption fix effective as if included in the enactment of section 112 of SECURE Act.	2025, PYB
Provisions Starting in 2026 or Later			
338	R&D: Paper Statement Mandate	Requires at least one quarterly benefit statement to be delivered on paper unless the participant opts-out of the paper requirement. The paper disclosure requirement is once every 3 years for defined benefit plans. No paper required for wired-at-work or those who opt out of paper.	2026, PYB

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103	Saver's Match: Enhancement of Saver's Credit	<p>Refundable Saver's Match. The credit would be a match of 50% of up to \$2,000 in IRA or retirement plan contributions (less distributions to participant (or spouse if married, filing jointly) in past 3 years + period before return is file) - irrespective of tax liability. The match is phased out between \$41,000 and \$71,000 in the case of joint returns (\$20,500 to \$35,500 for single and married filing separate; \$30,750 to \$53,250 for head of household). Thresholds are indexed after 2027. Must go into retirement vehicle unless match is <\$100. Contribution/match treated as elective deferral (but doesn't count toward limits). Subject to distribution restrictions applicable to deferrals except can't withdraw for hardship. Detailed rules on recapture of early distributions (within prior 2 years). Separate accounting in plan because not included in top-heavy and special distribution rules.</p>	2027, TYB
114	Employee Ownership: Deferral of Tax for Certain Sales of Employer Stock to Employee Stock Ownership Plan Sponsored by S Corporation	<p>Deferral of tax for certain sales of employer stock to ESOPs. Permits the owner of employer stock issued by an S corporation to defer 10% of long term capital gain from the sale of that stock to an ESOP.</p>	2028