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The Michigan Tax Lawyer is a publication of the Taxation Section of the State Bar of Michigan that is designed to be a practical and useful resource for the tax practitioner. Input from members of the Taxation Section is most welcome. Our publication is aimed toward involving you in Section activities and assisting you in your practice. The Taxation Section web address is www.michigantax.org. If you have suggestions or an article you wish to have considered for publication, please contact Eric Gregory, Dickinson Wright, PLLC, 2600 W. Big Beaver Rd., Suite 300, Troy MI 48084; 248-433-7669; EGregory@dickinsonwright.com
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Letter from the Chair

Dear Taxation Section Members:

It is an honor to serve as Chair of the Taxation Section for the 2022–2023 term. Like the prior year, this year has continued to be a year of transition from the pandemic. It has been great to have returned to in-person meetings and programming, especially for our marquis events. I feel like the Tax Section has been energized by these activities. Yet, virtual programming has allowed us the opportunity to bring more programming to our members across Michigan, especially for committee events. The Taxation section has also offered several events, including Tax Council meetings, with options to attend both in-person or virtually.

The Taxation Section held its premier event, the Annual Tax Conference on May 25, 2023, at The Inn at St. John's in Plymouth, Mich. This was the 35th anniversary of the Annual Tax Conference, which continues to provide strong tax-focused educational content for our membership as well as a great networking opportunity to connect with other tax practitioners. Thank you to Erick Hosner and the ICLE team for planning such a great conference. Patrick Robertson of Confluence Government Relations is a nationally known speaker and provided great information on the latest tax developments in his Washington Tax Update. The Tax Section also was excited to hear from Rachel Eubanks, State Treasurer of Michigan, and Director Lance Wilkinson, Bureau of Tax Policy. The content and speakers at the event were excellent.

The Taxation Section also completed its Fourth Annual Fundamentals of Taxation event on Nov. 30, 2022, at the MSU Management Education Center in Troy Michigan. This event included a Tax Court Presentation by Judge Joseph W. Nega and was well attended. Thank you to Josh Bemis for planning the event and to Judge Nega for his insight.

The Tax Section has been successful in conducting a wide array of seminars and events during the year. At the start of the year, it was a goal to schedule events in advance so that members could better plan to attend events. Tax Council and Committee chairs have rallied around this initiative and several events have been posted on the Taxation Section's website at a given point of time. Jennifer Watkins has done a great job in promoting these events.

I would like to thank our Committee chairs who will host more than 15 seminars and events before the year closes. These chairs are:

- Employee Benefits — Samantha Kopacz
- Estates and Trusts — Buzz Leach
- Federal Income Tax — Cody Attisha
- State and Local Tax — Josh Beard
- Young Tax Lawyers — Sam Parks

I would encourage everyone to consider joining a Tax Section committee. Most committees have at least one more event scheduled in the coming months. Committee membership is free and helps ensures that you will receive notice of upcoming events. You can join a committee by logging into SBM Connect at connect.michbar.org/tax/committees/joincommittee.

With the increased prevalence of virtual events, the Tax Section is improving its capabilities to efficiently hold events virtually. Our program administrator, Barb Barratt, made improvements to our infrastructure to facilitate the registration and RSVP process for events. Look for announcements coming from our new email account: sbmtaxationsection@gmail.com.

Finally, I would like to thank all the Tax Council members and Committee Chairs for their support of the Tax Section this year. I am highly appreciative of everyone's time and efforts to provide content to the Tax Section's membership. It has been great working with you.

I look forward to seeing you at future events.

Sincerely,

Michael P. Monaghan
Chair, Taxation Section

Section Committee Reports

Employee Benefits

Samantha Kopacz
Committee Chair, Employee Benefits

Samantha Kopacz of Miller Canfield continues to act as Chair of the Employee Benefits Committee.

On February 2, 2023, the Employee Benefits Committee met virtually for a "Roundtable Discussion on Employee Benefits Hot Topics."

On April 6, 2023, Samantha Kopacz and Brian Gallagher (both of Miller Canfield) presented to the Employee Benefits Committee on SECURE Act 2.0.

On August 8, 2023, the Employee Benefits Committee will hold a networking event in Oakland County.

The Committee is currently developing its schedule of future events. For information on upcoming events, or to become involved with the Employee Benefits Committee, please register for the Employee Benefits Committee on SBM Connect or contact Samantha Kopacz at kopacz@millercanfield.com.

Estates and Trusts

Buzz Leach, JD, LLM
Committee Chair, Estates & Trusts

The Chair of the Estates & Trusts Committee of the Taxation Section is Buzz Leach, JD, LLM. Buzz is a Trust and Wealth Management Officer at Southern Michigan Bank & Trust, where he administers trusts, assists clients with wealth planning, and manages client's accounts. Buzz previously served as an estate planning lawyer in the Southwest Michigan and Metro Detroit areas. He also spent time with Comerica's Wealth Management Group as a Senior Wealth Planner, where he assisted high-net-worth clients with retirement goals, business succession planning, estate planning, and other financial planning needs.

Recent events for the Estates & Trusts Committee included:

1. Friday, May 19, 2023 from 5:30 – 7:30pm - Happy Hour at ICLE – Probates & Estate Planning Institute at the Red Ginger located at 237 E Front Street, Traverse City, MI 49684.
2. Wednesday, May 31, 2023 from 12:00 – 1:00pm via Zoom event featuring Raj A. Malviya, JD, LLM who will be spoke on the "Corporate Transparency Act: Nowhere Left to Run, Nowhere Left to Hide: What Estate Planning, Tax, and Business Attorneys Need to Know".

Federal Income Tax

Cody Attisha
Committee Chair, Federal Income Tax Section

Cody Attisha is business and tax attorney and Member with Kerr, Russell and Weber, PLC. His practice deals with business transactions, tax planning, tax controversy, and estate planning.

On October 6, 2022 Cody hosted a networking event at Zao Jun in Bloomfield Hills where about 10 individuals participated in.

On March 3, 2023, Cody hosted an M&A hot topics discussion at Plante Moran's Southfield office which was also accessible via Teams and followed by a happy hour. Emily Murphy and Kurt Piwko of Plante Moran presented. About 30 individuals attended the presentation with about half on Teams and half in person.

On June 1, 2023, Ivan Hewines of Plante Moran will be presenting on partnership debt allocations.

On June 29, 2023, Matt Carlson and Lisa Roelofs of Plante Moran will be presenting on anti-hybrid rules and implications for structuring. New foreign tax credit regulations.

Cody plans on hosting a tax controversy webinar later in the summer along with a networking event.

Young Tax Lawyers

Samuel Parks
Committee Chair, Young Tax Lawyers Committee

I am Samuel Parks, a 4th year tax associate at Miller Canfield. I am the chair of the Young tax lawyers committee. So far this year we have had a meet and greet and a virtual roundtable. Our next events will hopefully be speaker events where the speakers talk about a career in the world of tax.

The Disregarded Interest Rule Under Internal Revenue Code §2652(c)(2): The Catch-22 of Estate Planning for Large Estates

By Neal Nusholtz

Introduction

A “catch 22” happens when the act of claiming something contradicts the truth of what is being claimed. The term comes from Joseph Heller’s satirical novel about World War II, “Catch-22.” In his novel, an army psychologist explains to the main character, John Yossarian, that if a pilot claims insanity as a reason to discontinue flying dangerous missions, the pilot is not insane because it is the rational request of a sane person. The psychologist calls the inconsistency a catch-22.

The Disregarded Interest Rule

Internal Revenue Code (“IRC”) §2652(c)(2) contains a similar circular logic that applies when an estate planner deliberately includes a beneficial interest in a trust to prevent the 40% generation skipping transfer (“GST”) tax (40% at current rates). Deliberately including a beneficial interest to avoid the GST tax causes the beneficial interest to be disregarded. The code section states:

(2) Certain interests disregarded.

For purposes of paragraph (1), an interest which is used primarily to postpone or avoid any tax imposed by this chapter shall be disregarded.

The statute allows the Internal Revenue Service (“IRS”) to apply the GST tax after it has disregarded a trust interest that effectively avoids the GST, that is, if the interest was used “primarily to avoid the tax. 26 CFR (“Treas. Reg.”) 26.2612(e)(2)(ii) defines primary purpose as “a significant purpose.” [1]

The act of deliberately including an interest in a trust to avoid or postpone the generation skipping tax provides a factual basis for that included interest to be disregarded. Thus, the statute creates a predicament for drafters of estate plans for large estates. It’s like trying to jump over your own shadow.

The Breadth of §2652(c)(2)

Along with other definitions in IRC §2652, the disregarded interest rule is part of definition of “an interest in property held in trust.”[2] Prior to the Technical and Miscellaneous Revenue Act of 1988, the word “nominal” appeared in first four words of §2652(c)(2) and implied that only nominal interests would be disregarded.[3]

Congress removed the requirement that a disregarded interest be “nominal” in the Technical and Miscellaneous Revenue act of 1988 saying, “The bill clarifies the rule of present law that disregards interests primarily used to postpone or avoid the generation-skipping transfer tax by removing any suggestion that the interest to be disregarded must be nominal and by providing that the rule applies if the primary purpose of the interest is to avoid any generation-skipping transfer tax.”[4]

Taxable Terminations

On its face, §2652(c)(2) looks like it could be used to knock out any beneficial interest that stands in the path of the government collecting a GST tax. No rulings or treatises address limits on the breadth of its application. The disregarded interest rule is a form over substance attack on adding interests to a trust in an effort to postpone or avoid GST taxable terminations. Taxable terminations are defined under IRC §2612(a)(1) as a termination of an interest in a trust (by death, lapse of time, release of power, or otherwise) unless:

(A) Immediately afterward a non skip person has an interest in the trust [a skip person is a person two or more generations below the transferor]. See IRC §2613] or

(B) At no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person.

Adding non skip persons to a trust will prevent a taxable termination under paragraph A . Under the disregarded interest rule, that non-skip interest will be disregarded if a significant purpose for the creation of the interest is to postpone or avoid the tax."[5]

The Postponement Rule

The disregarded interest rule relates to the (obsolete) postponement rule. The postponement rule existed in prior Treas. Reg. 26.2613-2(b)(1) & (2)[6]. The postponement rule applied when the deaths of two or more beneficiaries could cause multiple GST taxes in a single trust. To avoid multiple GST taxes to the same trust property, the postponement rule specified that a taxable termination occurs after the last death:

> §26.2613-2(b) Time certain terminations deemed to occur — (1) Where two or more beneficiaries are assigned to same generation. If two or more younger generation beneficiaries of a trust with present interests or present powers are assigned to the same generation, the transfer constituting the termination with respect to each beneficiary shall be treated as occurring at the time when the last termination occurs, unless the separate share rules under f 26. 2613-5 apply.
>
> (2) Successive interests. If a younger generation beneficiary's present interest or present power terminates and if a beneficiary assigned to the same generation as, or a higher generation than, such younger generation beneficiary has a present interest or present power immediately after the termination and such present interest or present power arose as a result of the termination, the transfer constituting the termination with respect to each beneficiary shall be treated as occurring at the time when the last termination occurs with respect to the younger generation beneficiary assigned to the same or higher generation.

Treas. Reg. 26.2613-1 continued on to say that the postponement rule will not apply if a remaining interest is "nominal." An interest would not be classified as nominal if the interest is classified as "substantial":

> (3) Nominal interest — (i) In general. If the rule under paragraph (b) (1) or (b) (2) of this section is utilized primarily for the postponement of the taxable termination, the taxable termination will occur at the time determined under paragraph (a) of this section, without regard to paragraph (b)(1) or (b)(2). Whether the rule under paragraph (b)(1) or (b)(2) is utilized primarily for the postponement of the taxable termination depends, under all the facts and circumstances, on the classification of the remaining beneficiary's interest or power as nominal. A taxable termination will not be postponed if the remaining beneficiary's present interest or present power is classified as nominal. Conversely, if the remaining beneficiary's present interest or present power is classified as substantial, the taxable termination will be postponed until the time that it terminates or is classified as nominal. If an interest or power is classified as nominal, the value of that interest or power will not reduce the value of the terminated interest or power and the termination of the nominal interest or power is not a taxable event.

Without the postponement rule, if a trust with only two beneficiaries had left income to a grandchild and then left income to a great grandchild, after the death of both of them, there would have been two 40% taxes on the entire trust. An application of the postponement rule would result in only one tax at the second death.

An example of a disregarded interest rule is provided in the Committee Report of the Technical and Miscellaneous Revenue Act of 1988:

> For example, if a transferor placed property in trust which is to pay income to a great grandchild for a relatively short period, then income to a grandchild for life, with remainder going back to a great grandchild, in order to avoid a second imposition of the generation-skipping transfer tax, the income interest of the great grandchild would be disregarded so that there would be a generation-skipping transfer tax at the death of the grandchild. That interest would be disregarded even though distributions to the great grandchild are taxable distributions.[7]

In 1981, the IRS issued proposed Treas. Reg. §§ 26.2611-1 through 26. 2611-4.[8] The regulations addressed taxable terminations. The proposed regulations contained the postponement rule and a requirement that remaining interests in a trust be "substantial" to have the postponement rule apply. The preamble to the proposed regulations provided:

> The proposed regulation under §26.2613-2 defines the term "taxable termination" and sets forth the rules that result in the postponement of a taxable termination. In addition, the proposed regulation provides, in part, that the postponement rules will not apply unless the remaining beneficiary's interest or power is substantial.

The Multiple Skips Rule

The need for a postponement rule to avoid taxation of multiple taxable terminations was eliminated by a "multiple skips" rule in IRC §2653 enacted in the Tax Reform Act of 1986.[9] According to that rule, after a generation skipping tax, the transferor for determining skip generations would be deemed to be the "generation immediately above the highest generation of any person holding an interest in the trust immediately after the transfer." To illustrate, if a trust has a grandchild and a great grandchild as beneficiaries, after a taxable generation skipping transfer, the original transferor will be treated as being one generation above the grandchild (see example 1, Treas. Reg.26.2653-1(b)1). Treas. Reg.26.2653-1(a) states:

> (a) General rule.—If property is held in trust immediately after a GST, solely for purposes of determining whether future events involve a skip person, the transferor is thereafter deemed to occupy the generation immediately above the highest generation of any person holding an interest in the trust immediately after the transfer. If no person holds an interest in the trust immediately after the GST, the transferor is treated as occupying the generation above the highest generation of any person in existence at the time of the GST who then occupies the highest generation level of any person who may subsequently hold an interest in the trust. See § 26.2612-1(e) for rules determining when a person has an interest in property held in trust.

The disregarded interest rule was intended to apply to postponement rule situations where one or more insubstantial non-skip interests had been added to a trust to avoid a tax from generation skipping transfers. Because of the multiple skip rule, the disregarded interest rule no longer serves a purpose. Nevertheless, its language extends to all interests, nominal, substantial, insignificant or otherwise, as long as the purpose is to avoid or postpone the GST tax. That can make GST drafting unpredictable.

The Disregarded Interest Rule Meets the Delaware Tax Trap

Consider the estate plan of a married couple having $40 million in assets with three children and five grandchildren. Upon their joint deaths, their estate plan leaves the maximum to grandchildren without a GST tax ($24.12 million in 2022). The balance is left in trust with income to their daughter Jane. On Jane's death, the remainder is distributed to the remaining children or their surviving issue pe stirpes. If one of her siblings predeceases Jane with surviving children, the distribution to those grandchildren will be subject to the 40% GST tax.[10]

One way to avoid the GST tax on Jane's death is if the distribution to grandchildren is part of her estate. Under Treas. Reg §26.2652-1(a), If the trust is part of Jane's estate, Jane would be the transferor for GST purposes. If so, her nieces or nephews would not be a taxable skip generation. That regulation states:

> Treas. Reg §26.2652-1(a)Transferor defined (1) In general. —Except as otherwise provided in paragraph (a)(3) of this section, the individual with respect to whom property was most recently subject to Federal estate or gift tax is the transferor of that property for purposes of chapter 13.

Under the regulation, if the property going to grandchildren is included in Jane's estate, there would be no GST tax because her nieces and nephews are not two generations below Jane. But Jane's family would probably protest including her parent's trust in her estate because including $16 million would put her over the exemption and cause her deceased estate to pay estate taxes on everything in her estate.

What we would like to do is to allow Jane to selectively decide whether to include a distribution to a particular niece and nephew in her estate -- if it turns out that doing so doesn't cost her estate anything in the way of taxes on her estate. That's where the Delaware Tax Trap[11] comes in handy.

Under IRC §2041(a)(3), if Jane has the option of leaving her nieces or nephews a power of withdrawal[12] instead of a distribution from the trust, and she leaves them a power of withdrawal, that will cause the amount going to the niece or nephew to be included in her estate, thereby avoiding the GST tax. Jane would only do that if her estate was small enough, compared to the estate tax exemption, so as not to incur an estate tax on the amount going to a particular nephew. Here is the problem, by leaving a niece or nephew a power of withdrawal, Jane has created an interest which is "used primarily to avoid" the GST tax; and our question is, would it be disregarded under IRC §2562(c)(2)?

Three arguments can be made that the creation of a power of withdrawal by Jane should not be a disregarded interest under IRC §2652(c)(2). The first is that the disregarded interest rule should have no application outside of the (obsolete) postponement rule. A broad application of the rule will wreak havoc in the area of estate planning for large estates. The list of possibly affected interests is limited only by your imagination and would include independent trustees, trust protectors and trust directors.

Secondly, a power of withdrawal of at least 5% of the value of the trust property was classified as "substantial" in proposed Treas. Reg. 26.2613-2(b)(3(ii) [13] and, consequently, a power of withdrawal is not a disregarded interest in regard to the postponement rule:

> Proposed Treas. Reg. 26.2613-2(b)(3(ii). If a beneficiary possesses the right to withdraw or receive income or corpus (or both), the present value of which at the time of the termination is at least 5 percent of the value of the trust, then the beneficiary's interest is substantial.

Thirdly and lastly, in December of 1995, the IRS issued proposed treasury regulation §26.2652-1(a)(4)[14] which said that taxpayers who trigger the Delaware tax trap are transferors for GST purposes. That proposed regulation did not include a requirement that the trap be triggered without an intention of avoiding or postponing a GST tax. The proposed regulation was removed in 1997 "to eliminate any uncertainty" and because that section of the proposed regulation could cause a GST tax "when it may not otherwise have applied."[15]

Conclusion

Bottom line, it doesn't hurt to give a life estate beneficiary the ability to leave powers of withdrawal to a selected group of remainder beneficiaries (a group that does cannot include the life beneficiary, his or her estate, or his or her creditors or the creditors of his or her estate) and it might help.

About the Author

__Neal Nusholtz__ is a shareholder in the Kemp Klein Law Firm in Troy Michigan. He is a tax attorney specializing in tax controversies, including estate and income tax audits, IRS administrative appeals, tax litigation in federal district courts, the U.S. Tax Court, and the 6th Circuit Court of Appeals. Neal is a graduate of Oberlin College and Cooley Law School. He is a contributor to the Journal of the American Revolution website and two of his articles were published in the 2017 Annual Volume. Neal was selected by Corp Magazine in June of 1999 as one of the Top Ten Business Attorneys in Southeastern Michigan.

Endnotes

1 26.2612(e)(2)(ii). Certain interests disregarded. — An interest which is used primarily to postpone or avoid the GST tax is disregarded for purposes of chapter 13. An interest is considered as used primarily to postpone or avoid the GST tax if a significant purpose for the creation of the interest is to postpone or avoid the tax.

2 IRC § 2652(c)(1) In General— A person has an interest in property held in trust if (at the time the determination is made) such person—

(A)—has a right (other than a future right) to receive income or corpus from the trust,

(B)—is a permissible current recipient of income or corpus from the trust and is not described in section 2055(a), or

is described in section 2055(a)and the trust is—

(i)—a charitable remainder annuity trust,

(ii)—a charitable remainder unitrust within the meaning of section 664, or

(iii)—a pooled income fund within the meaning of section 642(c)(5)

(2) Certain Interests Disregarded — For purposes of paragraph (1), an interest which is used primarily to postpone or avoid any tax imposed by this chapter shall be disregarded.

3 The old law said:
IRC §2652(c)(2) Certain nominal interests disregarded— For purposes of paragraph (1), an interest which is used primarily to postpone or avoid the tax imposed by this chapter shall be disregarded.

4 Committee Reports - H.R. Rep. No. 100-795, 100th Cong., 2d Sess. 351 (1998).

5 See n 1

6 1981-1 CB 718-19.

7 See n. 4

8 Notice of Proposed Rulemaking LR 205-76, 1981-1 CB 713, January 1, 1981.

9 IRC §2653(a) (1) If there is a generation-skipping transfer of any property, and
(2)immediately after such transfer such property is held in trust,
for purposes of applying this chapter (other than section 2651) to subsequent transfers from the portion of such trust attributable to such property, the trust will be treated as if the transferor of such property were assigned to the first generation above the highest generation of any person who has an interest in such trust immediately after the transfer.

10 The predeceased parent rule under IRC §2651(e) only applies to parents who are deceased at the time of the transfer – not parents who become deceased between the time of the transfer and the date of distribution.

11 See IRC §2041(a)(3)

12 MCL §700.7103(f)

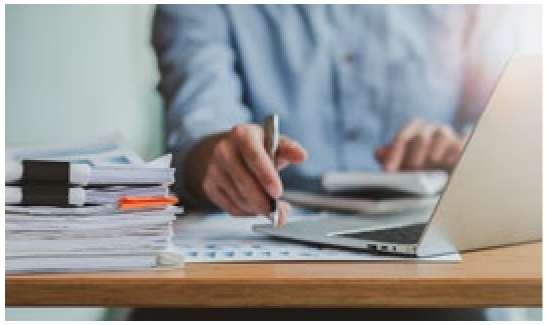
13 See n. 6

14 See n. 9, proposed Treas. Reg.§26.2652-1(a)(4):
(4) Exercise of certain nongeneral powers of appointment. The exercise of a power of appointment that is not a general power of appointment (as defined in section 2041(b)) is treated as a transfer subject to Federal estate or gift tax by the holder of the power if the power is exercised in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any specified life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation (perpetuities period). For purposes of this paragraph (a)(4), the exercise of a power of appointment that validly postpones or suspends the vesting, absolute ownership, or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date of creation of the trust) is not an exercise that may extend beyond the perpetuities period.

15 See Treasury Decision 8720. May 20, 1997

An Overview of the Secure 2.0 Act

By Samantha A. Kopacz, Brian T. Gallagher, Katina K. Gorman and Samuel L. Parks



Introduction

Following the passage of the Setting Every Community Up For Retirement Enhancement Act (the "SECURE Act")[1] at the end of 2019, another—arguably even more sweeping—set of retirement plan changes were passed into law in the final days of 2022. This second set of eagerly-anticipated, comprehensive retirement plan changes is commonly known as the SECURE 2.0 Act (the "Act").[2] The Act was signed into law on December 30, 2022, as part of the Consolidated Appropriations Act of 2023.[3] This article provides an overview of the major changes applicable to retirement plans under the Act.

Broad themes of the Act's provisions include eliminating barriers to retirement plan participation, enhancing access to retirement savings in certain situations, further aligning various rules across different types of plans, and what is being called the "Rothification" of retirement savings.[4] Many of the Act's provisions clarify and expand previous changes made by the original SECURE Act. The Act enjoyed broad bi-partisan support and is largely seen as a win for industry groups, plan sponsors, and participants that will promote increased retirement savings and improve plan administration.

The deadline for plan amendments made pursuant to the Act or any Internal Revenue Service (the "Service") or Department of Labor ("DOL") regulation issued thereunder is the last day of the first plan year beginning on or after January 1, 2025 (2027 for governmental and collectively bargained plans).[5] If, in the interim, a plan operates as if a retroactive amendment is already in effect, the retroactive amendment will not be treated as violating the anti-cutback rules (unless otherwise provided in Service guidance). The Act also conforms certain plan amendment deadlines under the SECURE Act,[6] the CARES Act,[7] and the Taxpayer Certainty and Disaster Tax Relief Act of 2020[8] to these new dates.

The medley of assorted changes made by the Act (grouped by title) include the following provisions:

Title I – Expanding Coverage and Increasing Retirement Savings

Expanding Automatic Enrollment in Retirement Plans – Act Sec. 101

Prior to the Act, a defined contribution plan allowing salary deferrals was *permitted* to provide for automatic enrollment at a default contribution rate, unless the participant elected not to participate or elected a different contribution rate. Such an arrangement is known as an automatic contribution arrangement. Such arrangements have been demonstrated to improve participation rates (particularly among younger and lower paid workers) by leveraging behavioral inertia. Despite the success of these arrangements, many plan sponsors have been hesitant to add an automatic contribution arrangement feature to their plans due to the additional cost and administrative burden.

Moving forward, under the Act, new 401(k) and 403(b) plans generally *must* be established as an "eligible automatic contribution arrangement" (or "EACA") (which is an automatic contribution arrangement that satisfies certain additional requirements)[9] with an initial deferral rate between 3% and 10%, as well as automatic increases to participants' deferral rates of 1% per year, up to a maximum of at least 10% (but no more than 15%).[10] Funds contributed pursuant to a default election must be invested pursuant to the qualified default investment alternative (or "QDIA") rules.[11] In addition, participants must be permitted to make permissible withdrawals within 90 days of the first automatic deferral.[12]

Despite the broad application of this provision, there are many plans which are excepted, including: SIMPLE plans, plans established prior to passage of the Act, governmental plans, church plans, plans of new businesses in existence for less than three years, and plans of small businesses with less than ten employees.[13]

Effective Date: *Applies to plan years beginning after December 31, 2024.*[14]

Modification of Credit for Small Employer Pension Start-Up Costs – Act Sec. 102

Under prior law, small employers with fewer than 100 employees were eligible for a start-up credit equal to 50% of the startup costs of pension plans for three years (capped at $5,000 per year).[15] The Act increases the small employer start-up credit to 100% of qualified start-up costs for employers with 50 or fewer employees.[16] It also adds an additional credit of up to $1,000 per employee, for employer contributions made by employers with 50 or fewer employees for the first five years.[17] This employer contribution credit does not apply with respect to employees whose wages exceed $100,000 (as indexed), and is phased out for employers with between 51 and 100 employees.[18]

Effective Date: *Applies to taxable years beginning after December 31, 2022.*[19]

Saver's Match – Act Sec. 103

The existing saver's credit program provides a non-refundable tax credit for lower income individuals who contribute to a retirement plan equal to 10%, 20%, or 50% of their contributions depending on their adjusted gross income.[20] The Act makes the credit refundable and provides for it to be paid as a direct matching contribution from the federal government to the participant's account.[21] The Act also eliminates the tiered credit percentage and replaces it with a single 50% match percentage for those at a specified AGI with a gradual phaseout for higher income levels.[22]

Effective Date: *Applies to taxable years beginning after December 31, 2026.*[23]

Promotion of Saver's Match – Act Sec. 104

The Act requires Treasury to implement measures to increase public awareness of the saver's match and report to Congress regarding the same.[24]

Effective Date: *Applies immediately.*[25]

Pooled Employer Plans Modification – Act Sec. 105

Pooled employer plans are a type of multiple employer plan created by the SECURE Act that allow for the participation of unrelated employers in a single ERISA plan.[26] In order to qualify as a pooled employer plan, the plan was required designate a trustee responsible for the collection of contributions from the participating employers.[27] The Act permits the plan to designate any named fiduciary (other than a participating employer) to serve in this role.[28]

Effective Date: *Applies to plan years beginning after December 31, 2022.*[29]

Multiple Employer 403(b) Plans – Act Sec. 106

Prior to the Act, 403(b) plans were not permitted to be maintained by a multiple employer plan. The Act permits 403(b) multiple employer plans, including pooled employer plans.[30] The Act also directs the Treasury Department to issue regulations and publish model language addressing the application of the unified plan rule (commonly known as the "one bad apple rule") to such plans to provide relief similar to that available to qualified plans.[31] However, the application of these rules to church 403(b) plans is uncertain at this time.[32]

Effective Date: *Applies to plan years beginning after December 31, 2022.*[33]

Increase in Age for Required Beginning Date for Mandatory Distributions – Act Sec. 107

Retirement plan participants and IRA owners must take minimum distributions upon attainment of a certain age.[34] The SECURE Act increased the age upon which an individual's required beginning date is based from age 70½ to age 72.[35] The Act further increases that age to age 73 (with respect to individuals who attain age 72 after December 31, 2022 and age 73 before January 1, 2033), and age 75 (with respect to those individuals who attain age 74 after December 31, 2032).[36] As many commentators have noted, there is a technical error in the Act which subjects individuals born in 1959 to both regimes. Treasury and the Service are well aware of this issue. The authors anticipate a technical corrections bill or agency guidance.

Effective Date: *Applies to distributions required to be made after December 31, 2022, with respect to individuals who attain age 72 after such date.*[37]

Indexing of IRA Catch-Up Limit – Act Sec. 108

Unlike the catch-up limit applicable to deferrals under qualified plans, the catch-up limit applicable to IRAs was previously a static $1,000 limit. As a result of the Act, this limit will be adjusted for inflation, similar to the indexing applicable to qualified plans.[38]

***Effective Date**: Applies to taxable years beginning after December 31, 2023.*[39]

Higher Catch-Up Limit to Apply at Age 60, 61, 62, and 63 – Act Sec. 109

Defined contribution plans may permit participants who have attained age 50 to make additional deferrals above the usual limit.[40] Prior to the Act, the maximum additional catch-up limit permitted by law was $7,500 for 2023. The Act increases the Code Section 414(v) catch-up limit to the greater of either $10,000 or 50% more than the regular catch-up amount in 2024 for individuals ages 60-63.[41] The dollar amounts are indexed to inflation starting in 2026.[42]

***Effective Date**: Applies to tax years beginning after December 31, 2024.*[43]

Treatment of Student Loan Payments as Elective Deferrals for Purposes of Matching Contributions – Act Sec. 110

In recent years, student loan repayments have become an increasing challenge, particularly among the young workforce, and employers have sought various ways to facilitate student loan repayment as a recruiting and retention tool. Many workers feel financial pressure to choose between making repayments and contributing to their employer's retirement plan. In a PLR issued to Abbott Labs, the Service approved a retirement plan design which permitted employees to receive an employer nonelective contribution to their retirement plan accounts based upon student loan repayments.[44] While innovative, this PLR was of limited utility to other sponsors, partially because of the narrow scope of the design approved, and partially because a PLR can technically only be relied upon by the taxpayer who obtains it. Still, interest in this type of arrangement persisted.

The Act addresses this issue by expressly permitting employer matching contributions to be made based upon qualified student loan repayments, provided certain requirements are satisfied.[45] This provision applies to 401(k) plans, 403(b) plans, SIMPLE IRAs, and governmental 457(b) plans.[46] Plans that use a safe harbor plan design may use this rule as well, and plans subject to non-discrimination testing may test this population separately.[47] Clarification regarding how these rules will a apply if a participant makes both student loan repayments and elective deferrals is needed.

***Effective Date**: Applies to contributions made for plan years beginning after December 31, 2023.*[48]

Application of Credit for Small Employer Pension Plan Startup Cost to Employers which Join an Existing Plan – Act Sec. 111

The Act clarifies that the credit for small employer pension start-up costs applies to the situation when an otherwise eligible employer joins an existing multiple employer plan.[49]

***Effective Date**: Applies as if included in Section 104 of the SECURE Act.*[50]

Military Spouse Retirement Plan Eligibility Credit for Small Employers – Act Sec. 112

Pursuant to the Act, small employers with no more than 100 employees are able to receive tax credits for each military spouse participating in their defined contribution plan.[51] The amount of the credit is equal to $200 for each military spouse participating plus the amount of related employer contributions (up to $300 per participant), such that the maximum credit available for any participating military spouse is $500.[52] The credit is only available for the year the spouse begins participating and the two subsequent years.[53]

***Effective Date**: Applies to tax years beginning after the date of enactment of the Act.*[54]

Small Immediate Financial Incentives for Contributing to a Plan – Act Sec. 113

Participants may be more motivated to contribute to an employer-sponsored retirement plan if there is an immediate reward for doing so. However, under prior law, employers were prohibited from offering incentives other than a matching contribution under the plan as a result of the contingent benefit rule.[55] Under the Act, employers can now offer de minimis financial incentives (such as gift cards in small amounts) to encourage employees to make elective deferrals to a 401(k) or 403(b) plan.[56] These de minimis financial incentives cannot be paid for out of plan assets.[57] At this point, what amount qualifies as "de minimis" is open to interpretation and opinions vary. In addition, it is important to note that the Service considers gift cards and similar items to be cash-equivalents, which are fully taxable to the employee. Thus, while these immediate financial incentives are now permitted, they will generally be taxable to the employee.

Effective Date: *Applies to tax years beginning after the date of enactment of the Act.*[58]

Deferral of Tax for Certain Sales of Employer Stock Ownership Plans Sponsored by S Corporation – Act Sec. 114

Currently under the Code, an individual owner of stock in a non-publicly traded C-corporation that sponsors an ESOP may elect to sell his or her stock and defer the recognition of gain from that sale of stock to the ESOP if the seller (the participant) reinvests his or her sales proceeds into qualified replacement property.[59] After the sale to the ESOP, the ESOP must own at least 30% of the employer corporation's stock. The Act expands the gain deferral provisions by allowing a gain deferral (up to 10%) on sales of employer stock to an S corporation ESOP.

Effective Date*: Applies to sales made after December 31, 2027.*[60]

Withdrawals for Certain Emergency Expenses – Act Sec. 115

Withdrawals from certain tax-preferred retirement accounts, such as qualified plans, before age 59½ are generally subject to a 10% penalty tax.[61] There are, however, a number of statutory exceptions to this penalty.[62] The Act adds multiple new exceptions to the premature distribution penalty, including for "emergency personal expenses," which are "unforeseeable or immediate financial needs relating to personal or family emergency expenses."[63]

This new emergency personal expenses exception is subject to a limitation of one distribution per year of up to $1,000.[64] The withdrawal may be repaid within three years.[65] If it is not repaid, the individual cannot utilize this exception again until the expiration of the repayment period.[66] A plan may permit a distribution (i.e., provide for a distributable event) on account of this circumstance.[67]

Effective Date*: Applies to distributions made after December 31, 2023.*[68]

Allow Additional Nonelective Contributions to SIMPLE Plans – Act Sec. 116

Currently, employers with SIMPLE plans are required to make either an employer nonelective contribution equal to 2% of compensation, or an employer matching contribution equal to 100% of the first 3% of employee elective deferral contributions.[69] The Act expands this and allows employers to optionally make *additional* contributions to each employee, up to the lesser of 10% of compensation or $5,000 (as indexed for inflation).[70] If the employer chooses to make these additional contributions, it must make the contributions uniformly across all employee participants.

Effective Date*: Applies to taxable years beginning after December 31, 2023.*[71]

Contribution Limit for SIMPLE IRAs – Act Sec. 117

The Act increases contribution limits and catch-up provisions for SIMPLE IRAs. For employers with up to 25 employees, the Act increases the regular and catch-up contribution limits to 110% of the 2024 limits, as adjusted for inflation.[72] For employers with 26-100 employees, the Act allows these higher employee deferral limits only if the employer provides either a 4% matching contribution or a 3% employer nonelective contribution.[73] The Act makes similar changes to the contribution limits for SIMPLE 401(k) plans.[74]

Effective Date*: Applies to taxable years beginning after December 31, 2023.*[75] *The Secretary of Treasury will be required to report on data collected relative to SIMPLE IRAs annually beginning on December 31, 2024.*[76]

Tax Treatment of Certain Non-Trade or Business SEP Contributions – Act Sec. 118

This provision primarily permits employers of domestic employees (such as nannies) to provide retirement benefits for those domestic employees in the form of a simplified employee pension ("SEP").

Effective Date: *Applies to taxable years beginning after the date of enactment of the Act.*[77]

Application of Section 415 Limit for Certain Employees of Rural Electric Cooperatives – Act Sec. 119

Generally, Code Section 415 limits the amount of contributions to or benefits payable from a retirement plan with respect to a particular participant in any year.[78] The current limits for defined benefit plans are $265,000 (for 2023) or 100% of the participant's final average compensation.[79] For non-highly compensated employees who participate in a rural electric cooperative retirement plan, the Act eliminates the compensation-based limit on the amount of benefits that may be paid in one year (but the dollar limitation remains in place for these participants).[80]

Effective Date: *Applies to limitation years ending after the date of enactment of the Act.*[81]

Exception for Certain Automatic Portability Transactions – Act Sec. 120

Currently a plan is permitted to distribute a participant's account balance without the participant's consent if the balance is less than $5,000 and the balance is immediately distributable.[82] Furthermore, an employer is *required* to roll the distribution over into a default IRA if the distribution is greater than $1,000 and the participant does not provide other instructions.[83] The Act now allows service providers to streamline this process by automatically rolling participant balances in from these default IRAs back *into* the participant's new employer's retirement plan, unless instructed otherwise by the participant.[84] This, along with the new database created under Section 303 of the Act (see below), should help combat the growing industry problem of participants who have become disconnected with their retirement savings after changing jobs.

Effective Date: *Applies for transactions occurring on or after the date that is 12 months after the date the Act was enacted.*[85]

Starter 401(k) Plans for Employers with No Retirement Plan – Act Sec. 121

The Act creates two new plan designs, a new type of section 401(k) plan (called a "starter 401(k) deferral-only arrangement") and a new type of 403(b) plan (called a "safe harbor 403(b) plan").[86] Like a regular 401(k) plan, a starter 401(k) plan is a cash or deferred arrangement maintained by an employer meeting certain requirements such as the automatic enrollment discussed above (as well as rules for contributions, eligibility, employee notices, etc.).

Employers ***cannot*** make matching or nonelective contributions to starter 401(k) plans.[87] All eligible employees must be automatically enrolled at a default rate between 3% and 15% of compensation.[88] Contributions may not exceed $6,000 (indexed) per year, with an additional catch-up opportunity available to those participants age 50 and older.[89] All employees must be eligible except those not meeting age and service requirements.[90]

Only employers which do not maintain another qualified plan for the year the determination is being made are eligible to implement a starter 401(k) plan.[91]

Safe harbor 403(b) plans have similar conditions to the starter 401(k) plans.[92]

Starter 401(k) plans are treated as satisfying the actual deferral percentage (ADP) nondiscrimination test.[93] Both starter 401(k) plans and safe harbor 403(b) plans are deemed to pass the top-heavy test.[94]

Effective Date: *Applies to plan years beginning after December 31, 2023.*[95]

Assist States in Locating Owners of Applicable Savings Bonds – Act Sec. 122

The Act requires the Treasury to share with states certain information related to registration of savings bonds (e.g., an owner's last known address in that state).[96] The Act also requires the Treasury to report to Congress annually on its efforts to provide states information on unclaimed savings bonds.[97]

Effective date: *Effective on the date of enactment of the Act.*[98]

Certain Securities Treated as Publicly Traded in Case of Employee Stock Ownership Plans – Act Sec. 123

An ESOP holds assets mainly consisting of stock of the sponsoring company. If the company is publicly traded, there already exists a mechanism for participants to realize the value of their benefits (i.e., the participant can sell the stock on the public securities market). However, if the sponsoring company is not publicly traded, the Code requires that the company sponsoring the ESOP buy back the stock from participants who receive plan distributions.[99] The Act expands what types of securities can be considered publicly traded and allows certain non-exchange traded securities to qualify as publicly traded employer securities, so long as the security: 1) is subject to priced quotations by at least four dealers on an SEC-regulated interdealer quotation system; 2) is not a penny stock; 3) is not issued by a shell company; and 4) has a public float of at least 10% of outstanding shares.[100] Additionally, for domestic corporations, the issuer must publish audited financial statements, and securities issued by foreign corporations must meet additional reporting requirements.[101]

Effective Date: *Applies to plan years beginning after December 31, 2027.*[102]

Modification of Age Requirement for ABLE Programs – Act Sec. 124

ABLE programs are tax-advantaged savings programs for certain individuals with disabilities.[103] Distributions from ABLE programs are tax-free if the funds are used for qualified disability expenses of the beneficiary.[104] The Act increases the age by which blindness or disability occurs for an individual to qualify for an ABLE account from 26 to 46.[105] This will expand access to these programs.

***Effective Date**: Applies to taxable years beginning after December 31, 2025.[106]*

Improving Coverage for Part-Time Workers – Act Sec. 125

Under the SECURE Act, employers are required to allow long-term part-time workers to participate in the employer's 401(k) plan, by requiring employers to permit employees who completed three consecutive years of service in which the employee completed at least 500 hours of service to make elective deferrals to the plan.[107] The Act reduces this part-time employee eligibility requirement from three years to two years and expands this requirement to ERISA 403(b) plans.[108] However, only service after January 1, 2023 is counted for purposes of the two-year rule,[109] so the earliest an employee could become eligible to make deferrals under the new two-year rule is January 1, 2025. Additionally, the Act clarifies that pre-2021 service for part-time employees is not counted for vesting purposes under the original SECURE Act rule.[110]

***Effective Date**: Applies to plan years beginning after December 31, 2024. The vesting rules are effective as if included in the SECURE Act.[111]*

Special Rules for Certain Distributions From Long-Term Qualified Tuition Programs to Roth IRAs – Act Sec. 126

Current law allows families to establish tax-advantaged education savings accounts (so-called "529 accounts"). Funds in 529 accounts can only be used for specified education-related expenses and distributions for non-education related expenses are subject to penalty.[112] However, the Act will allow beneficiaries of 529 accounts to roll over some of the 529 account assets into a Roth IRA.[113] The Roth IRA must be in the beneficiary's name, and the 529 account must have been opened for at least 15 years prior to the rollover.[114] Such rollovers are subject to the annual Roth IRA contribution limits.[115] In addition, the rollovers are limited to: (1) the aggregate amount of contributions (plus earnings) before the five-year period ending on the date of the rollover;[116] and (2) a lifetime limit of $35,000 per beneficiary.[117]

***Effective Date**: Applies to distributions after December 31, 2023.[118]*

Emergency Savings Accounts Linked to Individual Account Plans – Act Sec. 127

There is a perception among many in the industry that lower income workers do not participate in retirement plans for fear that they will not be able to access their contributions if they need them for current expenses. To address this concern, the Act creates a new plan design option for account balance plans which permits plan sponsors to offer non-highly compensated employees a pension-linked "emergency savings account" ("ESAs"). Employees have previously had the option to save outside of their plans, but the theory is that the infrastructure and behavioral advantages of tying these accounts to employer retirement plans will improve follow-through and outcomes, and that once these participants build up a sufficient emergency savings cushion, they will be more comfortable making standard deferrals to the plan.

These ESAs must be funded on a Roth basis.[119] ESAs may not have any minimum balance or contribution requirements.[120] Participants may be automatically enrolled in ESAs at a default contribution rate of up to 3% of compensation.[121] No further contributions are permitted once the ESA balance reaches $2,500 (or such lower amount set by the plan sponsor).[122] If the employer makes matching contributions to the participant's individual account plan to which the ESA is linked, then the employer will also make matching contributions based upon the participant's contributions to the linked ESA at the same rate as the matching contributions on elective deferrals.[123] However, matching contributions attributable to ESA contributions will be deposited in the non-ESA portion of the plan.[124] A participant may withdraw from the ESA as necessary at least once per calendar month,[125] and the first four withdrawals from the account cannot be subject to any fees.[126] The account must be invested in certain very low-risk products.[127] At termination of employment, the employee may take a distribution of the ESA funds or roll it into another Roth account within the plan.[128]

***Effective Date**: Applies to plan years beginning after December 31, 2023.[129]*

Enhancement of 403(b) Plans – Act Sec. 128

403(b) plan investments are currently limited to annuity contracts and publicly traded mutual funds.[130] This prevents 403(b) plan participants from being able to invest in collective investment trusts, which can expand investment options at a lower cost for participants. The Act amends the Code to permit 403(b) accounts to participate in group trusts in the same manner as similarly situated qualified retirement plans and IRAs.[131] As a practical matter, however, the current state of securities laws precludes 403(b) plans from taking advantage of this opportunity to participate in group trusts.[132]

***Effective Date**: Applies after the date of enactment.*[133]

Title II – Preservation of Income

Remove Required Minimum Distribution Barriers for Life Annuities – Act Sec. 201

Prior to the Act, annuity distributions facilitated through insurance companies, often failed the mandatory actuarial test needed to comply with the required minimum distribution ("RMD") rules. The Act has removed many of these barriers by providing that an annuity will pass the relevant RMD test if it offers an annual increase to payments that is a constant percentage, but no more than 5%, or if it is a lifetime income annuity with a return of premium death benefit.[134] The intent of these changes are to expand the benefit options which provide lifetime income opportunities that are available to participants in defined contribution plans or IRAs.

***Effective Date**: Applies to calendar years ending after the date of enactment of the Act.*[135]

Qualifying Longevity Annuity Contracts – Act Sec. 202

Because qualified longevity annuity contracts ("QLACs") provide for payments that typically start toward the end of an individual's life expectancy, these products offer a relatively cheap hedge against longevity risk (i.e., the risk of outliving one's retirement assets). In addition, QLACs allow an individual to reduce RMDs because the premium amount is not considered part of the individual's account when calculating his or her RMD amount. Prior to the Act, an individual was limited to the lesser of $125,000 or 25% of his or her account that could be used towards a QLAC premium.[136] The Act removes the 25% cap and increases the limit to $200,000 (indexed annually) of IRA funds that can be used to purchase a QLAC.[137] The Act also allows the sale of QLACs with spousal survival rights and QLACs with a 90-day "free look" period.[138]

***Effective Date**: Applies to QLACs purchased on or after the date of the enactment of the Act. The Treasury must also update relevant regulations within 18 months of the date of enactment of the Act.*[139]

Insurance-Dedicated Exchange-Traded Funds – Act Sec. 203

The Act directs the Treasury Department to update its regulations to include Exchange Traded Funds (ETFs) as being "insurance-dedicated," a requirement that would make ETFs available as an investment option for individual variable annuities.[140] ETFs are already widely available through retirement plans, IRAs, and other taxable investment accounts. However, the regulations governing individual variable annuities are out of date and were written before the creation of ETFs. The Act facilities the creation of a new type of ETF that satisfies the annuity requirements.

***Effective Date**: The Treasury must update its regulations in accordance with the Act within seven years after the date of enactment of the Act,*[141] *and this provision applies to segregated asset account investments made seven years after the date of enactment of the Act.*[142]

Eliminating a Penalty on Partial Annuitization

When applying the RMD rules, currently a retirement account that holds an annuity must be separated from the annuity, which could result in higher minimum distributions than what would have been required if the retirement account did not also hold the annuity. The Act allows an account owner to opt to aggregate the value of the annuity contract with the remainder of his or her retirement account balance for purposes of determining his or her RMDs, and count payments from the annuity toward satisfying those RMDs.[143] The net effect generally results in a reduction to the overall RMD.

***Effective Date**: Applies as of the date of enactment of the Act.*[144]

Title III – Simplification and Clarification of Retirement Plan Rules

Recovery of Retirement Plan Overpayments – Act Sec. 301

The Act clarifies that fiduciaries are generally not required to recover an inadvertent benefit overpayment from the affected participant or the plan sponsor.[145] If the fiduciary chooses to recoup an overpayment from a participant or beneficiary, the Act provides additional guardrails on the recoupment process: (1) No interest or other additional costs or fees may be recouped; (2) With respect to recouping an overpayment via reduction of an annuity: (a) the reduction must cease after the full amount is recovered; (b) the amount recouped each calendar year may not exceed 10% of the overpayment; and (c) future benefit payments may not be reduced below 90% of the correct benefit; (3) Recoupment generally may not be made via threats of litigation or through a collection agency; (4) Overpayments to a participant may not be recouped from a beneficiary; and (5) Recoupment may not be sought if the first overpayment occurred more than three years before the participant or beneficiary is first notified in writing of the error.[146]

***Effective Date**: Effective as of the date of the Act. Any installment payment plans entered into prior to the effective date may continue uninterrupted by the enactment of the Act.*[147]

Reduction in Excise Tax on Certain Accumulations in Qualified Retirement Plans – Act Sec. 302

An excise tax is imposed on participants who fail to take RMDs.[148] The Act decreases the amount of that excise tax from 50% to 25% of any missed RMD.[149] The Act also provides a further reduction in the excise tax from 25% to 10% if the deficient distribution is corrected in a timely manner.[150] The correction window ends on the last day of the second taxable year that begins after the year in which the tax is imposed, or earlier if certain action is taken by the Service with respect to the failure.[151]

***Effective Date**: Effective for tax years beginning after the enactment of the Act.*[152]

Retirement Savings Lost and Found – Act Sec. 303

The Act directs the DOL to create an online searchable database to allow participants to search for retirement assets from plans they may have participated in previously, but no longer have contact information for the plan administrator.[153]

***Effective Date**: The database will be created within two years after the enactment of the Act.*[154]

Updating Dollar Limit for Mandatory Distributions – Act Sec. 304

Under current law, a plan may distribute a former employee's retirement benefit without the participant's consent if it does not exceed $5,000.[155] The Act increases this limit to $7,000.[156]

***Effective Date**: This is effective for distributions made after December 31, 2023.*[157]

Expansion of Employee Plans Compliance Resolution System – Act Sec. 305

The Employee Plans Compliance Resolution System ("EPCRS") is an umbrella program for certain Service retirement plan corrections programs.[158] These programs offer plan sponsors an opportunity to correct and avoid disqualification and are intended to encourage voluntary compliance by plan sponsors.

The Service currently offers three programs within EPCRS: the Self-Correction Program ("SCP"), the Voluntary Correction Program ("VCP"), and the Audit Closing Agreement Program ("Audit CAP").[159] The VCP and Audit CAP programs require interaction with the Service and require payment of fees and/or penalties, while SCP allows substantive correction without the requirement to obtain the Service's approval or pay a fee.[160] Prior to the Act, in order to be eligible for SCP, an operational failure must either have been insignificant or corrected within a three-year period.[161] Certain other failures were ineligible for SCP altogether.

The Act greatly expands access to SCP by making it available for correction of any "eligible inadvertent failure."[162] Notably, the only time-based eligibility restriction is that the correction is unavailable if the error is identified by the Service and the plan has either not taken action demonstrating a specific commitment to implement a self-correction, or the plan has not completed the self-correction in a reasonable amount of time after the Service identified its failure.[163] An "eligible inadvertent failure" includes any failure that occurs despite compliance practices and procedures that satisfy the EPCRS standards.[164] Egregious failures such as diversion or misuse of plan assets, as well abusive tax avoidance transactions, are not included.

This expansion of SCP now also includes the ability to self-correct participant loan-related errors.[165] Importantly, self-correction of loan failures will be treated as meeting the requirements of the DOL's VFCP, although the Secretary of Labor may impose additional reporting or procedural requirements.[166]

Additionally, the Act expands EPCRS access to IRAs.[167]

While these changes are effective immediately, they are subject to—among other things—"guidance of general applicability" prescribed by Treasury.[168] Presumably, Revenue Procedure 2021-30 currently constitutes such guidance. As such, it is an open question as to what degree plan sponsors can actually rely on these new rules until the EPCRS revenue procedure is updated.

***Effective Date**: The EPCRS changes are effective the day the Act was enacted and revisions to the compliance programs must be completed by the Service within two years.*[169]

Eliminate the "First Day of the Month Requirement" for Governmental Section 457(b) Plans – Act Sec. 306

Participants in 457(b) plans are subject to a unique requirement that any changes a participant seeks to make to his/her deferral election must be made prior to the beginning of the month in which the deferral will be made.[170] The Act eliminates this requirement for governmental 457(b) plans, allowing participants to make changes to their deferral rate at any time prior to the date that the compensation being deferred is available.[171] This aligns the rules for governmental 457(b) plans with the rules for 401(k) plans and 403(b) plans.

***Effective Date**: This section is effective for taxable years beginning after the date of enactment of the Act.*[172]

One-Time Election for Qualified Charitable Distribution to Split-Interest Entity; Increase in Qualified Charitable Distribution Limitation – Act Sec. 307

The Act allows an individual the opportunity to make a one-time distribution of up to $50,000 (indexed) from an IRA to a charity through charitable gift annuities, a charitable remainder unitrusts, and charitable remainder annuity trusts.[173] It also indexes the existing qualified charitable distribution limit for inflation.[174]

***Effective Date**: Applies to distributions made after the date of enactment of the Act.*[175]

Distributions to Firefighters – Act Sec. 308

Generally, qualified public safety employees in governmental plans who terminate employment after age 50 and take a distribution from their retirement plans are not subject to the typical 10% excise tax incurred for early distributions (the "public safety officer exception").[176] The public safety officer exception has historically excluded private sector firefighters.[177] The Act remedies this by including private sector firefighters, so that if a private sector firefighter terminates employment after age 50, he/she will not be subject to an excise tax if he/she takes a corresponding distribution.[178]

***Effective Date**: Applies to distributions made after the date of enactment of the Act.*[179]

Exclusion of Certain Disability-Related First Responder Retirement Payments – Act. Sec. 309

When first responders reach retirement age, the Act will allow them to exclude from their gross income a portion of any service-connected disability pension payments from a 401(a), 403(a), 403(b), or governmental 457(b) plan.[180] The excludible portion is based upon the disability payments received by the individual attributable to the 12-month period (or any portion thereof) prior to reaching retirement age.[181]

***Effective Date**: Applies to amounts received in taxable years beginning after December 31, 2026.*[182]

Application of Top-Heavy Rules to Defined Contribution Plans Covering Excludable Employees – Act Sec. 310

Retirement plans must pass a variety of nondiscrimination tests, including top-heavy tests. If a plan is deemed top-heavy, employers are required to make enhanced contributions and provide accelerated vesting.[183] While other nondiscrimination tests allow employers to test excludable and nonexcludable employees separately, this was not permissible for top-heavy testing. The Act remedied this by allowing employers to run the top-heavy testing for excludable employees separately from the testing for nonexcludable employees.[184]

Effective Date: Applies to plan years beginning after December 31, 2023.[185]

Repayment of Qualified Birth or Adoption Distribution Limited to Three Years – Act Sec. 311

The SECURE Act created a new exclusion from the 10% early distribution excise tax if an individual took a distribution from his or her retirement plan for situations related to the birth or adoption of a child.[186] The SECURE Act allowed participants to repay these funds into their retirement plan at any time, and the repayment was treated as a rollover. However, if a participant repaid the funds more than three years after the distribution, the participant would not be eligible to file an amended tax return to potentially receive a refund for taxes paid on the distribution (due to the three-year limitations period outlined in the Code).[187] To address this (and administrative concerns of plans), the Act now limits repayment of distributions related to the birth or adoption of a child to three years.[188]

***Effective Date**: Applies to distributions made after the enactment of the Act, and also retroactively to the three-year period beginning on the day after the date that the distribution was received.*[189]

Employer May Rely on Employee Certifying that Deemed Hardship Distribution Conditions are Met – Act Sec. 312

The Act allows employers to rely on a participant's self-certification that he or she is suffering from a hardship and would qualify for a hardship distribution from his or her 401(k) or 403(b) plan, that the distribution is not in excess of the amount needed and the participant has no alternate means to meet the financial need.[190] The Act also extends a similar rule to unforeseeable emergency distributions under governmental 457(b) plans.[191] Notwithstanding this new rule, presumably if a plan administrator has actual knowledge that a participant does not qualify for a hardship distribution, the administrator cannot rely on the participant's self-certification.

***Effective Date**: Applies to plan years beginning after the date of enactment of the Act.*[192]

Individual Retirement Plan Statute of Limitations for Excise Tax on Excess Contributions and Certain Accumulations – Act Sec. 313

The Code currently provides that, if a participant will be subject to excise taxes as a result of excess contributions to an account for failure to begin the RMDs, the statute of limitations for these violations begins when the individual files an excise tax return.[193] However, many individuals do not know they are required to file this return, so this may create an indefinite statute of limitations. The Act amends this by imposing a three year statute of limitations (or six-year statute of limitations for excess contributions) beginning when the individual files his or her individual 1040 income tax return for the year of the violation.[194]

***Effective Date**: Effective on the date of enactment of the Act.*[195]

Penalty-Free Withdrawal From Retirement Plans for Individual in Case of Domestic Abuse – Act Sec. 314

The Act creates another new exception to the 10% excise tax penalty for early distributions if a participant self-certifies that he or she is suffering from domestic abuse.[196] The participant may withdraw the lesser of $10,000 (indexed) or 50% of his or her account balance.[197] The participant may repay the distribution over three years and will be refunded for income taxes paid on any amounts that are repaid to the participant's account.[198] A participant may self-certify eligibility for this exception.[199] The Act also creates a permissible distributable event for such distributions.[200]

***Effective Date**: Applies to distributions made after December 31, 2023.*[201]

Reform of Family Attribution Rule – Act Sec. 315

For purposes of a number of the requirements applicable to retirement plans (such as coverage and nondiscrimination testing), related employers are treated as a single employer. Some the tests applicable to determine whether employers are related are dependent upon stock ownership and some individuals are deemed to own shares owned by certain other individuals, such as family members. The Code contains certain rules under which individuals are deemed to own stock of related businesses to determine the level of ownership of the business.[202] The Act updates two of these stock attribution rules. First, the Act eliminates consideration of community property rules for spouses living in community property states, so as to eliminate different treatment of spouses with separate businesses in community and separate property states.[203] Second, for attributions to a child, that will not by itself result in corporations being members of the same controlled group.[204]

***Effective Date**: Applies to plan years beginning after December 31, 2023.*[205]

Amendments to Increase Benefit Accruals Under Plan for Previous Plan Year Allowed Until Employer Tax Return Due Date – Act Sec. 316

The deadline for making a discretionary amendment is generally the end of the plan year in which it is effective.[206] Under the Act, if an employer adopts a retroactive plan amendment that will increase benefits accrued under the plan during the preceding plan year, and the amendment is adopted before the employer must file its tax return (including extensions), the employer may elect to treat the amendment as having been adopted as of the last day of the plan year in which it is effective.[207] In other words, the Act extends the time that an employer can adopt a retroactive plan amendment that increases benefit accrual to the date when its tax return is due.

***Effective Date**: Effective for plan years beginning after December 31, 2023.*[208]

Retroactive First Year Elective Deferrals for Sole Proprietors – Act Sec. 317

The SECURE Act allowed employers to establish new 401(k) plans after the end of their taxable year but before their tax returns are due.[209] However, elective deferrals were still subject to the rule that a 401(k) arrangement must be in place before amounts are deferred.[210] Therefore participants lacked a practical ability to make any elective deferrals for the first year of the plan. For sole proprietors or single-member LLCs, the Act now permits such a retroactively adopted new plan to receive elective deferrals until the due date for the employer's tax return (without extensions) and to have those contributions treated as deferrals with respect to the initial year of the plan's operation.[211]

Effective Date*: Applies to plan years beginning after the date of enactment of the Act.*[212]

Performance Benchmarks for Asset Allocation Funds – Act Sec. 318

The Act directs the DOL to update its regulations so that plan administrators may (optionally) benchmark an investment that uses a mix of asset classes in its participant fee disclosures against a blend of broad-based securities market indices, subject to the following: (1) the benchmark index blend reasonably matches the fund's asset class; (2) the benchmark index blend is reset at least once annually; (3) the benchmark is effectively communicated to participants; and (4) the benchmark indices are appropriate for the investment's asset class and meet the general requirements and conditions for index benchmarks.[213]

Effective Date*: The DOL is required to update its regulations no later than two years after the enactment of the Act and must also update Congress on the effectiveness of its benchmarking requirements no later than three years after the applicable date of the regulations.*[214]

Review and Report to the Congress Relating to Reporting and Disclosure Requirements – Act Sec. 319

In an effort to improve transparency and participant understanding, the number and length of required participant disclosures has dramatically increased in recent years. However, many industry leaders believe that this "oversharing" is counterproductive, and participants are now inundated with so much information they 'do not understand that they simply ignore it.

The Act directs the Treasury Department, the DOL, and the PBGC to review all current reporting and disclosure requirements imposed on retirement plans as soon as practicable after the enactment of the Act.[215] The agencies will then recommend to Congress ways to consolidate and improve the requirements no later than three years after the date of enactment of the Act.

Effective Date*: The agencies' recommendations must be reported to congress no later than three years after enactment of the Act.*[216]

Eliminating Unnecessary Plan Requirements Related to Unenrolled Participants – Act Sec. 320

The Act provides that, if an eligible employee has not enrolled in an employer-sponsored retirement plan (an "unenrolled participant"), the only notices an employer has to send the unenrolled participant are: (1) an annual reminder of his/her ability to participate in the plan; and (2) any document required to be sent to enrolled participants, but only on an as-requested basis.[217]

Effective Date*: Applies to plan years beginning after December 31, 2022.*[218]

Review of Pension Risk Transfer Interpretive Bulletin – Act Sec. 321

DOL Interpretive Bulletin 95-1 provides standards for fiduciaries relating to their selection of an insurance company to provide annuities in the case of terminating plans or de-risking annuity lift-outs from ongoing plans. This section of the Act only directs the DOL to review the current interpretative bulletin governing pension risk to determine if any amendments to the bulletin are needed.[219]

Effective Date*: The DOL must report its findings and recommendations to Congress no later than one year after the enactment of the Act.*[220]

Tax Treatment of IRA Involved in a Prohibited Transaction – Act Sec. 322

Under general tax law, if an individual engages in a prohibited transaction with his or her IRA, the IRA automatically ceases to be an IRA and assets are treated as being distributed to the individual.[221] The Act clarifies that if the individual has multiple IRAs, only the account the which the prohibited transaction occurred will cease to be an IRA.[222]

Effective Date*: Applies to taxable years beginning after the date of enactment of the Act.*[223]

Clarification of Substantially Equal Periodic Payment Rule – Act Sec. 323

The 10% excise tax penalty for early distributions from a retirement account does not apply to substantially equal periodic payments that are made over the account owner's life expectancy.[224] The Act clarifies that this exception continues to apply in the case of a rollover of the account from which payments are being made, an exchange of an annuity providing payments, or an annuity that complies with the required minimum distribution rules, and that those situations will not trigger tax penalties.[225]

***Effective Date**: Applies to transfers, rollovers, and exchanges after December 31, 2023, and applies to annuity distributions on or after the date of enactment of the Act.*[226]

Treasury Guidance on Rollovers – Act Sec. 324

The Secretary of the Department of Treasury must simplify the rollover process for participants by issuing sample forms for direct rollovers that can be used by both the incoming and outgoing plan or IRA.[227]

***Effective Date**: Sample forms must be available for use by January 1, 2025.*[228]

Roth Plan Distribution Rules – Act Sec. 325

Under the Act, Roth accounts in employer plans are not subject to the pre-death RMD requirements.[229] This puts Roth accounts in employer plans on par with Roth IRAs, which were already exempt from the pre-death RMD requirement.

***Effective Date**: This is effective for taxable years beginning after December 31, 2023, but does not apply to distributions that were required with respect to years beginning before January 1, 2024, but are being paid after that date.*[230]

Exception to Penalty on Early Distributions From Qualified Plans for Individuals with a Terminal Illness – Art Sec. 326

The Act allows terminally ill participants (i.e., participants reasonably expected to die in the next 84 months) to take an early distribution from their retirement plans without being subjected to the typical 10% penalty tax.[231] In order to qualify for this exception, the participant must have a physician's certification and provide such certification to the plan administrator.[232] Importantly, unlike the other exceptions to the premature distribution penalty established by the Act, this provision does not create a permissible distributable event for such distributions. Accordingly, it is not entirely clear why documentation must be provided to the plan administrator, or what the administrator's role and responsibility is in that regard. In any event, the participant has the option to repay amounts withdrawn within three years.[233]

***Effective Date**: Applies to distributions made after the date of enactment of the Act.*[234]

Surviving Spouse Election to be Treated as Employee – Act Sec. 327

The Act permits a surviving spouse who is the participant's sole designated beneficiary to elect to be treated as the employee for RMD purposes if the employee died before RMDs were required to commence.[235]

So, if for example, the employee had five years until RMDs were to begin under the plan (while the spouse was at an age requiring minimum distributions), the spouse could elect to be treated as the employee, and would then have five years until distribution would need to begin. If the spouse elects this treatment, the applicable distribution period after the employee's death will be determined under the Uniform Lifetime Table.[236] The Service will prescribe the manner for the election, which must be adhered to and include a timely notice to the plan administrator.[237] The election is irrevocable unless the Service consents.[238] This puts employer plans on similar footing to IRAs.

***Effective Date**: The changes are effective for calendar years beginning after December 31, 2023.*[239]

Repeal of Direct Payment Requirement on Exclusion from Gross Income of Distributions from Governmental Plans for Health and Long-Term Care Insurance – Act Sec. 328

Public safety officers who participate in a government retirement plan may exclude from their gross income up to $3,000 for a distribution used to pay health insurance premiums.[240] Previously, in order to qualify for the exclusion, the plan needed to directly pay the insurance premiums.[241] The Act eliminates this "direct pay" requirement and provides that the distribution may go directly to the participant.[242] If a distribution goes directly to the participant, then when filing tax returns for the year that the distribution was made, the participant must include an attestation that the distribution was not more than the amount of qualified health insurance premiums.[243]

***Effective Date**: This provision is effective for distributions made after the date of enactment of the Act.[244]*

Modification of Eligible Age for Exemption from Early Withdrawal Penalty – Act Sec. 329

There is an exception to the 10% premature distribution penalty for public safety employees who separate from service after attaining age 50.[245] The Act expands this public safety officer exception to also apply to participants who have 25 years of service with the employer sponsoring the plan, regardless of age.[246]

***Effective Date**: This provision is effective for distributions made after the date of enactment of the Act.[247]*

Exemption from Early Withdrawal Penalty for Certain State and Local Government Corrections Employees – Act Sec. 330

The Act also expands the public safety officer exception described in Section 329 above to cover corrections officers and forensic security employees who are employees of state and local governments.[248]

***Effective Date**: Applies to distributions made after the date of enactment of the Act.[249]*

Special Rules for the Use of Retirement Funds in Connection with Qualified Federally Declared Disasters – Act Sec. 331

The Act provides permanent rules pursuant to which, participants of retirement plans that are affected by a federally declared disaster can request a distribution of up to $22,000 from their retirement accounts without being subjected to the 10% early distribution penalty.[250] The distributions may be taken into account as gross income over a three-year period and can be repaid into retirement accounts.[251] Any amounts distributed may be repaid within a three-year window; distributions prior to the disaster to purchase a home can also be recontributed.[252] Employers may elect to allow for larger amounts to be borrowed as a loan, and employers may also elect for a longer loan repayment period.[253]

***Effective Date**: Effective for disasters occurring on or after January 26, 2021.[254]*

Employers Allowed to Replace SIMPLE Retirement Accounts with Safe Harbor 401(k) Plans During a Year – Act Sec. 332

Pre-Act law prohibited the mid-year replacement of a SIMPLE plan with a 401(k) plan. The Act allows employers, during a plan year, to replace a SIMPLE IRA with a SIMPLE 401(k) or a safe harbor 401(k) plan that has mandatory employer contributions.[255]

***Effective Date**: Applies to plan years after December 31, 2023.[256]*

Elimination of Additional Tax on Corrective Distributions of Excess Contributions – Act Sec. 333

Excess contributions to an IRA are subject to an excise tax.[257] The excise tax may be avoided by distributing the excess before the due date of the participant's return.[258] However, such distributions of excess contributions were previously subject to the 10% premature distribution penalty (or at least were not explicitly exempted from it). The Act provides an exception to this excise tax for excess IRA contribution corrective distributions if the participant does not claim a deduction for the distribution.[259]

***Effective Date**: The rules are effective on the day of the enactment of the Act for any determination of, or affecting, liability for taxes, interest, or penalties (so the action upon which the determination is based can occur before the Act passed).[260]*

Long-Term Care Contracts Purchase with Retirement Plan Distributions – Act Sec. 334

The Act creates yet another new exception to the 10% premature distribution excise tax by allowing a distribution of up to $2,500 (indexed) annually to pay premiums for long term care insurance contracts and permitting such distributions for this purpose.[261] The long term care contract must provide for high quality coverage in order to be eligible for the waiver of 10% excise tax.[262] Also, the participant must file with the plan a long-term care premium statement.[263]

***Effective Date**: This provision is not effective until three years after the date of enactment of the Act.*[264]

Corrections of Mortality Tables – Act Sec. 335

The Act directs the Treasury to make certain corrections to the mortality tables used in the regulations relating to minimum funding rules for defined benefit plans, so that a defined benefit pension plan is not required to assume beyond its valuation date future mortality improvements at any age greater than 0.78 percent.[265]

***Effective Date**: The revisions to the regulations will be made within 18 months of enactment of the Act.*[266]

Report to Congress on Section 402(f) Notices – Act Sec. 336

Under current law, participants must receive notices when a distribution is eligible for a rollover to another tax preferred account, and the notice must describe distribution options and tax consequences.[267] The Act requires the Government Accountability Office (the "GAO") to report to Congress the effectiveness of these notices on participants and make recommendations on ways to improve recipients' understanding of distribution options, tax consequences, and spousal rights.[268]

***Effective Date**: The GAO must make its report to Congress within 18 months after the date of enactment of the Act.*[269]

Modification of Required Minimum Distribution Rules for Special Needs Trusts – Act Sec. 337

When the SECURE Act was enacted, it limited the ability of beneficiaries of defined contribution accounts and IRAs to receive lifetime distributions following the owner's death. However, there are special rules for eligible designated beneficiaries, which includes beneficiaries with disabilities.[270] The Act clarifies that a special needs trust established for the benefit of a disabled beneficiary can name a charitable organization as a remainder beneficiary without jeopardizing the disability individual's eligible designated beneficiary status.

***Effective Date**: This is effective for calendar years beginning after the date of enactment of the Act.*[271]

Requirement to Provide Paper Statements in Certain Cases – Act Sec. 338

Recent years have seen an industry push to modernize participant communication resulting in guidance from the Service and the DOL increasingly permitting electronic disclosures if certain requirements are met. However, some groups opposed these changes, seeking to protect the interests of (typically older) less tech-savvy participants. The Act takes a step back by requiring at least one paper statement per year for participants of defined contribution plans.[272] Defined benefit plans are only required to send a statement once every three years, and the Act requires that this be a paper statement.[273] It is not clear whether defined benefit plans which elect to satisfy the alternative standard by providing an annual notice of availability (in lieu of the triennial statements) are subject to this new requirement. A participant may still affirmatively opt out of paper statements and instead elect to receive his or her statements electronically.[274] In addition, plans satisfying the older DOL regulations on electronic disclosure[275] are not subject to this rule.[276]

***Effective Date**: The DOL must update relevant regulations by December 31, 2024, and these provisions are effective for plan years beginning after December 31, 2025.*[277]

Recognition of Tribal Government Domestic Relations Orders – Act Sec. 339

Qualified domestic relations orders ("QDROs") are used to divide certain retirement assets in a divorce.[278] QDROs can only be issued by certain courts authorized under federal law.[279] Under the Act, tribal courts are now added to the list of authorized courts able to issue QDROs.[280]

***Effective Date**: Applies to QDROs received by plan administrators after December 31, 2022 (including orders that were submitted for reconsideration after that date).*[281]

Defined Contribution Plan Fee Disclosure Improvements – Act Sec. 340

The Act directs the DOL to review its own requirements regarding mandatory fee disclosure notices to participants in participant-directed individual account plans.[282] The DOL will request public comment regarding how the contents and disclosures in the notices may be improved to enhance participant understanding and will also submit a report to Congress regarding its findings and recommendations.[283]

***Effective Date**: Within three years, the GAO must submit a report to Congress regarding its findings and recommendations for legislative changes.*[284]

Consolidation of Defined Contribution Plan Notices – Act Sec. 341

The Act directs Treasury to issue regulations clarifying that plans may consolidate and send to participants in one mailing certain specified notices so long as the consolidated notice contains the required content, identifies the specific issues, is distributed at the required intervals, and is presented in a manner that is understandable to the average participant.[285] The notices that can be consolidated are: QDIA notices,[286] notices related to automatic contribution arrangements,[287] notices related to 401(k) plans,[288] and notices related to withdrawals from automatic contribution arrangements.[289] It should be noted that nothing in existing law prohibits the combination of participant notices and it has been commonplace to do so.

***Effective Date**: The Treasury and DOL must amend relevant regulations within two years.[290]*

Information Needed for Financial Options Risk Mitigation – Act Sec. 342

The Act creates a new notice to be provided to participants and retirees that will allow participants and retirees to effectively compare different benefit options available to them under the plan, specifically comparing benefit payments and lump sum distributions.[291] The notices must outline how the lump sum is calculated, and what the risks to participants are of electing a lump sum (e.g. loss of PBGC protection of monthly benefits, loss of protection from creditors, loss of spousal protections).[292] The notice must also direct participants and retirees where to find additional information and have questions answered.[293] Plan sponsors must also provide a 30-day advance notice of a lump sum window to the DOL and PBGC, as well as a post window report.[294] The DOL is directed to issue regulations and a model notice.[295]

***Effective Date**: The DOL must issue regulations no earlier than one year after the enactment of the Act, and the regulations cannot be applicable any earlier than the issuance of a final rule and no later than one year after the issuance of the final rule.[296]*

Defined Benefit Plan Annual Funding Notices – Act Sec. 343

The Act significantly modifies the required content of defined pension plans' annual funding notices with the intent to explain the plan's funding status more clearly.[297]

***Effective Date**: Applies plan years beginning after December 31, 2023.[298]*

Report on Pooled Employer Plans – Act Sec. 344

The Act requires the DOL to study the pooled employer plan[299] industry to asses a variety of information, including but not limited to: the number of pooled plans, the number of participants in the plans, fees assessed, range of investment options, participant disclosures, enforcement actions by the DOL, and the extent to which these plans have increased retirement savings.[300] The DOL must conduct this study every five years, and submit its findings to Congress, as well as make them available for public review.[301]

***Effective Date**: The DOL must report on its findings within five years, and every five years thereafter.[302]*

Annual Audits for Group of Plans – Act Sec. 345

The SECURE Act created relief for a Group of Plans to file a single, consolidated Form 5500 if the Group of Plans consists of a group of defined contribution retirement plans with the same trustee, named fiduciary, plan administrator, plan year beginning date, and investment options.[303] The Act clarifies that small defined contribution plans (fewer than 100 participants) that file a single Form 5500 as a Group of Plans do not need to submit an audit opinion, even if the Group of Plans has more than 100 participants.[304] Only the individual defined contribution plans with 100 or more participants within the Group of Plans need to submit an audit opinion.[305] This will dramatically improve the attractiveness of such arrangements.

***Effective Date**: Effective on the date of enactment of the Act.[306]*

Worker Ownership, Readiness, and Knowledge (WORK) Act – Act Sec. 346

The Act creates the WORK Act, which requires the DOL to establish an Employee Ownership Initiative (the Initiative) to promote employee ownership and employee participation in business decision making.[307] The Initiative is to be funded at $4 million in fiscal year 2025, and gradually increasing to $16 million by fiscal year 2029.[308] States can apply for grants to fund programs that can be used for: (1) providing education and outreach to employees and employers regarding succession planning, financial education, employee teams and other tools for employees to share ideas about the business can succeed; (2) technical assistance to employees to become business owners and explore possibility of transferring ownership to employees; (3) training employees and employers regarding methods of employee participation and obtaining employee input; and (4) training other entities on how to establish and carry out new programs.[309] Essentially, the funds held by the DOL are available to states or other nonprofits applying via grant application to create programs used to educate business owners about using employee ownership for business transitions, training employees on workplace participation programs, and technical assistance in implementing these trainings.

Effective Date*: Applies when appropriated funds are available, beginning in 2025.*[310]

Report by the Secretary of Labor on the Impact of Inflation on Retirement Savings – Act Sec. 347

The Act directs the DOL and Treasury Department to conduct a study on the impact of inflation on retirement savings.[311]

Effective Date*: The DOL and Treasury Department must report to Congress within 90 days on their findings and the results of their study.*[312]

Cash Balance – Act Sec. 348

The Act clarifies that, for defined benefit plans that have a variable interest crediting rate, the interest crediting rate that is treated as in effect and as the projected interest crediting rate will be a reasonable projection of the variable interest crediting rate, with a ceiling of no more than 6%.[313]

Effective Date*: Applies to plan years beginning after the date of enactment of the Act.*[314]

Termination of Variable Rate Premium Indexing – Act Sec. 349

In addition to the per-participant premium, covered defined benefit plans are required to pay a variable rate premium to the PBGC, based upon the amount of their unfunded liabilities.[315] The variable rate premium was previously indexed for inflation and is equal to $52 per each $1,000 of unfunded vested benefits in 2023. The Act eliminates this indexing, such that future variable rate premiums will remain based upon a flat $52 for each $1,000 of unfunded vested benefits.[316]

Effective Date*: This is effective on the date of enactment of the Act.*[317]

Safe Harbor for Correction of Employee Elective Deferral Failures – Act Sec. 350

The Service has previously issued guidance in EPCRS on how employers can correct a failure of default enrollment into retirement plans.[318] The Service's previous guidance includes safe-harbor provisions which permit correction without penalty if the employer properly notifies the affected employee, the correct deferrals are started within a specified time period, and the employer makes any matching contributions that would have been due but for the error.[319] However, these safe harbor provisions were set to expire December 31, 2023.[320] To alleviate this pressure, the Act allows employers 9½ months to correct, without penalty, reasonable errors made related to automatic enrollment and automatic escalation of contributions. In other words, errors must be corrected prior to 9½ months following the close of the plan year in which the error occurred.[321]

Effective Date*: Applies to errors made after December 31, 2023 (after the existing EPCRS safe-harbor ends).*[322]

Title IV – Technical Amendments

Amendments Relating to Setting Every Community Up for Retirement Enhancement Act of 2019 – Act Sec. 401

The Act adds technical and clerical amendments to the SECURE Act (e.g., addition or removal of "and" in certain sections).[323] None of the amendments have any material or substantive impact on plan sponsors.

Effective Date*: These technical amendments are effective as if originally included in the SECURE Act.*[324]

Title V – Administrative Provisions

Provisions Relating to Plan Amendments – Act Sec. 501

Plan amendments that are made as a result of the Act can be made on or before the last day of the first plan year beginning on or after January 1, 2025 (or 2027 for governmental and collectively bargained plans), provided the plan operates in accordance with the amendments as of the effective date outlined in the Act.

The Act also extends amendment deadlines for the SECURE Act, the CARES Act, and the Taxpayer Certainty and Disaster Relief

Act of 2020 to align with the Act's amendment deadlines.[325] For the most part, these extensions had already been previously granted by the Service through administrative guidance.[326] However, nongovernmental 457(b) plans were conspicuously omitted from the prior relief and therefore would have been subject to the original amendment deadline of December 31, 2023, but for this provision.

Title VI – Revenue Provisions

SIMPLE and SEP Roth IRAs – Act Sec. 601

Generally, all plan types that allow pre-tax employee contributions are allowed to accept Roth IRA contributions except for SIMPLE IRAs.[327] The Act changes this by allowing SIMPLE IRAs to also accept Roth contributions.[328] The Act also allows employers to offer employees the option of treating contributions to a simplified employee pension plan as Roth contributions.[329]

Effective Date: *Applies to plan years beginning after December 31, 2022.*[330]

Hardship Withdrawal Rules for 403(b) Plans – Act Sec. 602

When recent changes were made to the hardship distribution rules for 401(k) and 403(b) plans, by the Bipartisan Budget Act of 2018, there were some notable differences between the provisions applicable to 401(k) plans versus those applicable to 403(b) plans, which most believed to be unintended results of legislative drafting errors. For example, 401(k) plans are permitted to allow hardship withdrawals from earnings on elective deferrals, while 403(b) plans were prohibited from doing so. The Act remedies this and conforms 403(b) plan hardship rules to those applicable to 401(k) plans.[331]

Effective Date: *Applies to plan years beginning after December 31, 2023.*[332]

Elective Deferrals Generally Limited to Regular Contribution Limit – Act Sec. 603

The Act provides that, with respect to individuals whose wages for the prior year exceed $145,000 (as indexed), catch-up contributions may only be made on a Roth basis.[333] Unfortunately, a technical error in the bill eliminates catch-up contributions altogether beginning in 2024.[334] The authors fully expect a technical amendment bill, or at a minimum, agency guidance that permits catch-ups contributions to continue in spite of this error.

Even ignoring the foregoing issue, this provision has yielded some interesting debate on other fronts. For example, the income limitation is based on wages, which partners do not have. In addition, many have questioned whether a plan can implement a Roth feature that is limited to these catch-up contributions.

Effective Date: *Applies to taxable years beginning after December 31, 2023.*[335]

Optional Treatment of Employer Matching or Nonelective Contributions as Roth Contributions – Act Sec. 604

Historically, only elective deferrals made by participants have been permitted to be contributed on a Roth basis.[336] The Act now permits a plan to allow participants to elect to receive employer contributions on a Roth basis.[337] This could prove to be an extremely powerful planning tool for certain participants. However, many unanswered questions remain, particularly regarding the reporting and withholding on Roth employer contributions.

Effective Date: *Applies to contributions made after the date of the enactment of the Act.*[338]

Charitable Conservation Easements – Act Sec. 605

The Act disallows a charitable deduction or a qualified conservation contribution if the deduction is greater than 2½ times the sum of each partner's relevant basis in the contributing partnership, unless the contribution meets a three-year holding test, the contributing partnership is owned by members of a family or the contribution relates to preserving a historic structure.[339]

Effective Date: *Applies as of the effective date of the Act.*[340]

Enhancing Retiree Health Benefits in Pension Plans – Act Sec. 606

If an employer sponsored pension plan is overfunded, the employer may use assets from that plan to pay retiree health and life insurance benefits.[341] The provisions allowing for this are set to sunset in 2025. The Act extends the life of these provisions to 2032,[342] and permits employers to make a de minimis transfer of up to 1.75% of plan assets, but only if the plan is at least 110% funded.[343]

***Effective Date**: Applies to transfers made on or after the date of enactment of the Act.*[344]

Title VII – Tax Court Retirement Provisions

Provisions relating to judges and special trial judges of the Tax Court – Act Secs. 701 and 702.

Tax Court judges and special trial judges of the Tax Court are treated differently from other federal judges. The Act levels the field by allowing Tax Court judges to receive automatic or matching contributions to the Thrift Savings Plan,[345] and also creates a retirement program under which a special trial judge of the Tax Court may participate.[346]

Conclusion

SECURE 2.0 Act is another piece of lengthy and comprehensive legislation intended to help taxpayers save more money for retirement, improve retirement rules, and encourage employers to set up retirement plans for the benefit of their employees. The provisions have rolling effective dates, and the authors expect that many provisions will be enhanced with formal and/or informal guidance from the DOL or Department of Treasury as effective dates draw near.

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Endnotes

1 Pub. L. No. 116-94. The SECURE Act is set forth as Division O of the Further Consolidated Appropriations Act, 2020.

2 Act § 1(a).

3 Pub. L. No. 117-328. The SECURE 2.0 Act is set forth as Division T of the Consolidated Appropriations Act, 2023. As permitted by Section 1(a) of Division T, that division is separately cited to throughout the remainder of this article as the "SECURE 2.0 Act of 2022" or the "Act."

4 Due to congressional budget scoring rules, this Rothification was necessary to pass the Act on cost-neutral basis.

5 Act § 501

6 (PL 116-94, 12/20/2019)

7 (PL 116-136, 3/27/2020)

8 (PL 116-260, 12/27/2020)

9 § 414(w)(3)

10 I.R.C. § 414A, as added by Act § 101(a). For plan years ending before January 1, 2025, the maximum percentage is 10% except for certain safe harbor plans.

11 I.R.C. § 414A(b)(4), as added by Act § 101(a).

12 I.R.C. § 414A(b)(2), as added by Act § 101(a). *See also* I.R.C. § 414(w)(2).

13 I.R.C. § 414A(c), as added by Act § 101(a).

14 Act § 101(c).

15 I.R.C. § 45E.

16 I.R.C. § 45E(e)(4), as added by Act § 102(a).

17 I.R.C. § 45E(f), as added by Act § 102(b).

18 *Id.*

19 Act § 102(d).

20 I.R.C. § 25B.

21 I.R.C. § 6433(a)(2), as added by Act § 103(a).

22 I.R.C. § 6433(b), as added by Act § 103(a).

23 Act § 103(f).

24 Act § 104.

25 *Id.*

26 ERISA § 3(43).

27 ERISA § 3(43)(B)(ii).

28 *Id.*, as amended by Act § 105.

29 Act § 105(b).

30 I.R.C. § 403(B)(15), as added by Act § 106(a); ERISA § 3(43)(A), as added by Act § 106(d).

31 Act § 106(e)-(f).

32 Act § 106(g).

33 Act § 106(h).

34 I.R.C. § 401(a)(9).

35 I.R.C. § 401(a)(9)(C)(i)(I), as amended by SECURE Act § 114(a).

36 I.R.C. § 401(a)(9), as amended by Act § 107(a)-(d). It will be interesting to see what approach Treasury takes with respect to the currently proposed regulations implementing the SECURE Act of 2019 changes to Code Section 401(a)(9).

37 Act § 107(e).

38 I.R.C. § 219(b)(5)(iii), as added by Act § 108(a).

39 I.R.C. § 108(b).

40 I.R.C. § 414(v). The Code Section 402(g) limit for 2023 is $22,500.

41 I.R.C. § 414(v)(2)(E), as added by Act § 109(b)

42 I.R.C. § 414(v)(2)(C), as amended by Act § 109(c).

43 Act § 109(d)

44 PLR 201833012, May 22, 2018. The Service determined that this arrangement did not violate the contingent benefit rule set forth in Code Section 401(k)(4)(A) because the employer nonelective contribution was not contingent upon the employee's decision to make (or not to make) elective deferrals under the plan.

45 I.R.C. § 401(m), as amended by Act § 110(a)-(c).

46 Act § 110(a)-(f).

47 I.R.C. § 401(m)(13)(B), as amended by Act § 110(c).

48 Act § 110(h).

49 I.R.C. § 45E(d)(3)(A), as amended by Act § 111(a).

50 Act § 111(b).

51 I.R.C. § 45AA(a), as added by Act § 112(a).

52 *Id.*

53 I.R.C. § 45AA(b), as added by Act § 112(a).

54 Act § 112(e)

55 I.R.C. § 401(k)(4)(A).

56 I.R.C. § 401(k)(4)(A), as amended by Act § 113(a); 403(b)(12)(A), as amended by Act § 113(b); ERISA § 4975(d)(24), as added by Act § 113(c).

57 *Id.*

58 Act § 113(e).

59 I.R.C. § 1042.

60 Act § 114(c).

61 I.R.C. § 72(t)(1).

62 I.R.C. § 72(t)(2)

63 I.R.C. § 72(t)(2)(I), as added by Act § 115(a).

64 I.R.C. § 72(t)(2)(I)(ii)-(iii), as added by Act § 115(a).

65 I.R.C. § 72(t)(2)(I)(vi), as added by Act § 115(a).

66 I.R.C. § 72(t)(2)(I)(vii), as added by Act § 115(a).

67 I.R.C. § 72(t)(2)(I)(v), as added by Act § 115(a).

68 Act § 115(c).

69 I.R.C. § 408(p)(2), as amended by Act § 116.

70 I.R.C. § 408(p)(2)(iv), as modified by Act § 116(a).

71 Act § 116(c).

72 I.R.C. § 408(p)(2)(E), as modified by Act § 117(a); I.R.C. § 414(v), as modified by Act § 117(b).

73 *Id.*

74 Act § 117(g).

75 Act § 117(h).

76 Act § 117(i).

77 Act § 118(b).

78 I.R.C. § 415.

79 I.R.C. § 415(b); I.R.S. Notice 2022-55.

80 I.R.C. § 415(b)(12), as added by Act § 119(a).

81 Act § 119(b).

82 I.R.C. § 401(a)(31)(B)(ii); § 411(a)(11)(A). Note that Act § 304 increases this limit to $7,000.

83 I.R.C. § 401(a)(31)(B).

84 I.R.C. § 4975, as amended by Act § 120(a)-(b).

85 Act § 120(e).

86 I.R.C. § 401(k)(16), as added by Act § 121(a); I.RC. § 403(b)(16), as added by Act § 121(b).

87 I.R.C. § 401(k)(16)(D)(i)(I), as added by Act § 121(a).

88 I.R.C. § 401(k)(16)(C), as added by Act § 121(a)

89 I.R.C. § 401(k)(16)(D)(i)(II)-(III), as added by Act § 121(a).

90 I.R.C. § 401(k)(16)(F), as added by Act § 121(a).

91 I.R.C. § 401(k)(16)(E), as added by Act § 121(a).

92 I.R.C. § 403(b)(16), as added by Act § 121(b).

93 I.R.C. § 401(k)(16)(A), as added by Act § 121(a).

94 I.R.C. § 416(g)(4), as modified by Act § 121(c).

95 Act § 121(d).

96 Act § 122(a).

97 *Id.*

98 Act § 122(b).

99 I.R.C. §409(h).

100 I.R.C. § 401(a)(35)(I), as added by Act § 123(a).

101 I.R.C. § 401(a)(35)(I)(v)-(vi), as added by Act § 123(a).

102 Act § 123(b).

103 I.R.C. §529A.

104 I.R.C. §529A(c).

105 I.R.C. § 529A(c), as modified by Act § 124(a).

106 Act § 124(b).

107 I.R.C. § 401(k)(12)(F)(i)(I), as added by SECURE Act § 103(b).

108 ERISA § 202(c), as added by Act § 125(a); Code § 403(b)(12)(D), as added by Act § 125(b).

109 ERISA § 202(c)(4), as added by Act § 125(a).

110 Act § 125(d).

111 Act §125(f).

112 I.R.C. § 529.

113 I.R.C. § 529(c)(3)(E), as added by Act § 126(a).

114 I.R.C. § 529(c)(3)(E)(i), as added by Act § 126(a).

115 I.R.C. § 529(c)(3)(E)(ii)(I), as added by Act § 126(a).

116 I.R.C. § 529(c)(3)(E)(i)(I), as added by Act § 126(a).

117 I.R.C. § 529(c)(3)(E)(ii)(II), as added by Act § 126(a).

118 Act § 126(d)

119 I.R.C. §402A(e), as modified by Act § 127(e).

120 ERISA § 801(c)(1)(A)(i), as added by Act § 127(b).

121 ERISA § 801(d)(2), as added by Act § 127(b).

122 ERISA § 801(d)(1)(A), as added by Act § 127(b). Note that there are many opinion question as to exactly how this limit applies.

123 ERISA § 801(d)(4)(A), as added by Act § 127(b).

124 *Id.*

125 ERISA § 801(c)(1)(A)(ii), as added by Act § 127(b).

126 ERISA § 801(c)(1)(C)(i), as added by Act § 127(b).

127 ERISA § 801(c)(1)(A)(iii), as added by Act § 127(b).

128 ERISA § 801(e), as added by Act § 127(b).

129 Act § 127(g).

130 I.R.C. § 403(b)(7).

131 I.R.C. § 403(b)(7)(A), as amended by Act § 128(a).

132 It is the authors' understanding that this was not an oversight. Rather, Congress was fully aware of this challenge, but could not get consensus on the securities issue and still elected to include this provision to, in essence, "get one foot in the door."

133 Act §128(c).

134 Act §201(a).

135 Act § 201(b).

136 Treas. Reg. 1.401(a)(9)-6 Q&A 17; Treas. Reg. 1.408-8 Q&A 12.

137 Act § 202(a)(1)-(2).

138 Act § 202(a)(3)-(4).

139 Act § 202(c).

140 Act § 203(a).

141 *Id.*

142 Act § 203(d).

143 Act § 204(a).

144 Act § 204(d).

145 ERISA § 206(h)(1), as added by Act § 301.

146 ERISA § 206(h)(4), as added by Act § 301.

147 Act § 301(c).

148 I.R.C. § 4974(a)

149 I.R.C. § 4974(a), as modified by Act § 302(a).

150 I.R.C. § 4974(e), as added by Act § 302(a).

151 I.R.C. § 4974(e), as added by Act § 302(a).

152 Act § 302(c).

153 ERISA § 523, as added by Act § 303(a).

154 ERISA § 523(a)(1), as added by Act § 303(a).

155 I.R.C. §§ 401(a)(31)(B)(ii); 411(a)(11)(A); ERISA § 203(e)(1).

156 I.R.C. §§ 401(a)(31)(B)(ii); 411(a)(11)(A); ERISA § 203(e)(1), all as modified by Act § 304(a).

157 Act § 304(b).

158 Rev. Proc. 2021-30.

159 *Id.*

160 *Id.*

161 Rev. Proc. 2021-30 § 9.02.

162 Act § 305(a).

163 *Id.*

164 Act § 305(e).

165 Act § 305(b)(1).

166 Act § 305(b)(2)-(3).

167 Act § 305(c).

168 Act § 305(a).

169 Act § 305(g).

170 I.R.C. § 457(b)(4).

171 I.R.C. § 457(b)(4), as modified by Act § 306(a).

172 Act § 306(b).

173 I.R.C. § 408(d)(8)(F), as added by Act § 307(a).

174 I.R.C. § 408(d)(8)(G), as added by Act § 307(b).

175 Act § 307(c).

176 I.R.C. § 72(t)(10).

177 *Id.*

178 I.R.C. § 72(t)(10)(A), as modified by Act § 308(a).

179 Act § 308(c).

180 I.R.C. § 139C, as added by Act § 309(a).

181 I.R.C. § 139C(c), as added by Act § 309(a).

182 Act § 309(c).

183 I.R.C. § 416(c)(2).

184 Act § 310(a).

185 Act § 310(b).

186 I.R.C. § 72(t)(2)(H).

187 I.R.C. § 6511.

188 I.R.C. 72(t)(2)(H)(v)(I).

189 Act § 311(b).

190 I.R.C. § 401(k)(14)(C), as added by Act § 312(a); I.R.C. § 403(b)(11), as modified by Act § 312(b)(2).

191 I.R.C. § 457(d)(4), as added by Act § 312(c).

192 Act § 312(d).

193 I.R.C. § 6501.

194 I.R.C. § 6501(l)(4), as added by Act § 313(a).

195 Act § 313(b).

196 I.R.C. § 72(t)(2)(K), as added by Act § 314(a).

197 I.R.C. § 72(t)(2)(K)(ii), as added by Act § 314(a).

198 I.R.C. § 72(t)(2)(K)(v), as added by Act § 314(a).

199 I.R.C. § 72(t)(2)(K)(vi)(III), as added by Act § 314(a).

200 *Id.*

201 Act § 314(b).

202 I.R.C. § 414.

203 I.R.C. § 414(b)(2), as amended by Act § 315(a).

204 *Id.*

205 Act § 315(b).

206 *See* I.R.C. 401(b).

207 I.R.C. 401(b)(3), as added by Act § 316(a).

208 Act § 316(b).

209 I.R.C. § 401(b)(2).

210 Treas. Reg. § 1.401(k)-1(a)(3)(iii)(A).

211 I.R.C. § 401(b)(2), as modified by Act § 317(a).

212 Act § 317(b).

213 Act § 318(a).

214 Act § 318(a); (b).

215 Act § 319(a).

216 Act § 319(b)(1).

217 New ERISA § 111, as added by Act § 320(a).

218 Act § 320(c).

219 Act § 321.

220 *Id.*

221 I.R.C. § 408(e)(2).

222 I.R.C. § 408(e)(2)(A), as modified by Act § 322(a).

223 Act § 322(b).

224 I.R.C. § 72(t)(2)(A)(4).

225 I.R.C. § 72(t)(4)(C), as added by Act § 323(a); I.R.C § 72(q)(3), as modified by 323(b); and I.R.C. § 72(t)(2)(A) AND 72(q)(2), both as modified by Act § 323(c).

226 Act § 323(e).

227 Act § 324(a).

228 *Id.*

229 I.R.C. § 402A(d)(i), as added by Act § 325(a).

230 Act § 325(b).

231 I.R.C. § 72(t)(2)(L), as added by Act § 326(a).

232 I.R.C. § 72(t)(2)(L)(iii), as added by Act § 326(a).

233 I.R.C. § 72(t)(2)(L)(iv), as added by Act § 326(a).

234 Act § 326(b).

235 I.R.C. § 401(a)(9)(B)(iv), as amended by Act § 327(a).

236 Act § 327.

237 I.R.C. § 401(a)(9)(B)(iv), as amended by Act § 327(a).

238 *Id.*

239 Act § 327(c).

240 I.R.C. § 402(l)(1)-(2).

241 I.R.C. § 402(l)(5)(A).

242 I.R.C. § 402(l)(5)(A), as modified by Act § 328(a).

243 I.R.C. § 402(l)(5)(A)(ii), as modified by Act § 328(a).

244 Act § 328(b).

245 I.R.C. § 72(t)(10)(A).

246 I.R.C. § 72(t)(10)(A), as modified by Act § 329(a).

247 Act § 329(b).

248 I.R.C. § 72(t)(10)(B), as modified by Act § 330(a).

249 Act § 330(b).

250 I.R.C. § 72(t)(2)(M), as added by Act § 331(a)(1).

251 I.R.C. § 72(t)(11)(D), as added by Act § 331(a)(2).

252 I.R.C. § 72(t)(11)(C), as added by Act § 331(a)(2); I.R.C. § 72(t)(8)(F), as added by Act § 331(b).

253 I.R.C. § 72(p)(6), as added by Act § 331(c).

254 Act § 331(a)(3).

255 I.R.C. § 408(p)(11), as added by Act § 332.

256 Act § 332(c).

257 I.R.C. § 4973(a)

258 I.R.C. § 4973(b)(2).

259 I.R.C. § 72(t)(2)(A)(viii), as added by Act § 333(a).

260 Act § 333(b).

261 Act § 334 (a); (c).

262 I.R.C. § 401(a)(39)(C), as added by Act § 334(a).

263 I.R.C. § 401(a)(39)(E), as added by Act § 334(a).

264 Act § 334(e).

265 Act § 335(a).

266 Act § 335(b).

267 I.R.C. § 402(f).

268 Act § 336.

269 *Id.*

270 I.R.C. § 401(a)(9)(H)(iv).

271 Act § 337(c).

272 ERISA § 105(a)(2), as modified by Act § 338(a).

273 *Id.*

274 ERISA § 105(a)(2)(E)(ii), as added by Act § 338(a).

275 *See* DOL Reg. § 2520.104b-1(c).

276 ERISA § 105(a)(2)(E)(i), as added by Act § 338(a).

277 Act § 338(c).

278 See I.R.C. § 414(p).

279 I.R.C. § 414(p)(1).

280 I.R.C. § 414(p)(1)(B), as modified by Act § 339(a).

281 Act § 339(c).

282 Act § 340.

283 Act § 340(2)-(3).

284 Act § 340.

285 Act § 341.

286 ERISA § 404(c)(5)(B).

287 ERISA § 514(e)(3).

288 I.R.C. §§ 401(k)(12)(D); 401(k)(13)(E).

289 I.R.C. § 414(w)(4).

290 Act § 341.

291 ERISA § 113, as added by Act § 342(a).

292 ERISA § 113(b), as added by Act § 342(a).

293 *Id.*

294 ERISA § 113(a)(2) and (d), both as added by Act § 342(a).

295 ERISA § 113(b)(3), as added by Act § 342(a).

296 Act § 342(c).

297 ERISA § 101(f)(2)(B), as modified by Act § 343(a).

298 Act §343(b).

299 Defined in ERISA § 3(43).

300 Act § 344.

301 *Id.*

302 Act § 344(2).

303 SECURE Act § 202.

304 Act § 345(a)

305 *Id.*

306 Act § 345(b).

307 Act § 346(b).

308 Act § 346(g).

309 Act § 346(c).

310 Act § 346(g).

311 Act § 347.

312 *Id.*

313 Act § 348(a); (b).

314 Act § 348(c).

315 ERISA § 4006(a)(3)(E)(ii).

316 ERISA § 4006(a)(8), as modified by Act § 349(a).

317 Act § 349(c).

318 Rev. Proc. 2015-28.

319 *Id.*

320 Rev. Proc. 2021-30 Section 2.01(6).

321 I.R.C. § 414(cc), as added by Act § 350.

322 Act § 350(b).

323 Act § 401.

324 Act § 401(c).

325 Act § 501(c).

326 Notice 2022-33; Notice 2022-45.

327 Note that non-governmental 457(b) plans are likewise prohibited from holding Roth assets.

328 Act § 601.

329 *Id.* Note that, except for grandfathered SAR-SEPs, these will all be employer funds.

330 Act § 601(e).

331 I.R.C. § 403(b)(17), as added by Act § 602(a).

332 Act § 602(c).

333 I.R.C. § 414(v)(7), as added by Act § 603(a).

334 *See* Act § 603(b)(1). This conforming amendment accidentally deleted the paragraph of Code Section 402(g) which permits catch-up contributions to exceed the normal Code Section 402(g) limit.

335 Act § 603(c).

336 *See* I.R.C. § 402A

337 I.R.C. 402A(a), as modified by Act § 604.

338 Act § 604(e).

339 I.R.C. § 170(h)(7), as added by Act § 605(a).

340 Act § 605(c).

341 I.R.C. § 420.

342 I.R.C. § 420(b)(4), as modified by Act § 606(a)(1).

343 I.R.C. § 420(e)(7), as modified by Act § 606(a)(2).

344 Act § 606(c).

345 Act § 701.

346 Act § 702.