Section 103.

(last updated 1/19/2023)

Title: Saver's Match

Effective Date: Effective for tax years beginning after December 31, 2026.

Mandatory or Optional: N/A

Plans Affected: All

Previous Law: The existing Saver's Credit employs a tiered percentage system ranging from 10-50% based on Adjusted Gross Income ("AGI") to determine the amount of the credit.

SECURE 2.0 Law: Modifies the existing Saver's Credit to make it refundable and turns it into a direct government matching contribution to the taxpayer's IRA or eligible retirement plan.

Guidance and/or Correction Bills:

- None

Section 106.

(last updated 1/19/2023)

Title: Multiple employer 403(b) plans

Effective Date: Effective for plan years beginning after December 31, 2022.

Mandatory or Optional: Optional

Plans Affected: 403(b)

Previous Law: The SECURE Act provided for the creation of PEPs, which allowed unrelated employers to join the same plan while still being considered one plan for purposes ERISA. PEPs are not subject to the same Department of Labor ("DOL") commonality requirements as closed MEPs. 403(b) plans were not included in these provisions in 2019.

SECURE 2.0 Law: Permits certain 403(b) plans to be operated as MEPs (including as PEPs) and clarifies the annual reporting requirements. It also directs Treasury to issued regulations providing relief from the "one bad apple" rule for 403(b)s and to issue model plan language.

Guidance and/or Correction Bills:

- None

Section 107.

(last updated 5/23/2023)

Title: Increase in age for required beginning date for mandatory distributions

Effective Date: Effective for distributions made after December 31, 2022, for individuals who attain age 72 after that date.

Mandatory or Optional: Mandatory

Plans Affected: All

Previous Law: As established by the 2019 SECURE Act, required minimum distributions ("RMDs") generally must begin by age 72. Prior to January 1, 2020, the age at which RMDs were required to begin was 70½.

SECURE 2.0 Law: Increases the RMD age to:

i. 73 for a person who attains age 72 after December 31, 2022 and age 73 before January 1, 2033, and
ii. 75 for an individual who attains age 74 after December 31, 2032.

Guidance and/or Correction Bills:

- 5/23/23 Letter from the Four Corners on SECURE 2.0 Technical Corrections

NAGDCA Action:

- 3/23/23 Letter to IRS and Treasury

Section 109.

(last updated 4/4/2023)

Title: Higher catch-up limit to apply at age 60, 61, 62 and 63

Effective Date: Effective for taxable years beginning after December 31, 2024.

Mandatory or Optional: Optional

Plans Affected: 401(k); 403(b); 457(b)

Previous Law: Currently, individuals age 50 and over are allowed to make catch-up contributions to 401(k), 403(b), governmental 457(b), and SIMPLE plans, and the annual catch-up contribution limits are generally indexed for inflation. In 2022, the maximum catch-up contribution for non-SIMPLE plans is $6,500, and $3,000 for SIMPLEs.

SECURE 2.0 Law: Non-SIMPLE plans: Increases the limit on catch-up contributions for individuals age 60-63 to the greater of (i) $10,000 or (ii) 150% of the regular catch-up amount for 2024, indexed for inflation

Guidance and/or Correction Bills:

- None

Question & Answer *(last updated 4/4/2023)*

All answers marked with an asterisk (*) are pending verification from the IRS.

Is the 60-63 catch-up provision subject to the Roth requirements from Section 603?

- *Yes*.

Is the 60-63 catch-up provision optional for the plan to allow if they choose to offer 50+ catch-up contributions.

- *Unclear. We are seeking further guidance to confirm whether offering 50+ catch-up automatically raises the contribution limits for those reaching age 60.**

If my plan offers catch-up contributions, and has Roth, do I need to do anything to allow the 60-63 catch limit other than update payroll?

- *Maybe. Depending upon the wording in the current plan document, an amendment may be necessary. Each plan document provider will determine the specific amendments required by the Secure 2.0 Act.*

What happens to the catch-up contribution limit after the participant turns 64?

- *It reverts to the age 50+ catch-up limit.*

Section 110.

(last updated 9/11/2024)

Title: Treatment of student loan payments as elective deferrals for purposes of matching contributions

Effective Date: Effective for plan years beginning after December 31,2023.

Mandatory or Optional: Optional

Plans Affected: 401(k); 403(b); 457(b); SIMPLE IRAs

Previous Law: Currently, a matching contribution cannot be made based on student loan repayments. The IRS has ruled (through a private letter ruling, and more general guidance is pending) that a plan design that provides for a nonelective employer contribution can be based on student loan repayments without violating the contingent benefit rule.

SECURE 2.0 Law: Employer contributions can be made on behalf of employees who are making "qualified student loan payments" and are treated as matching contributions, so long as certain requirements are satisfied. Applies to 401(k), 403(b), SIMPLE IRAs, and governmental 457(b) plans. Notably, a plan may treat a qualified student loan payment as an elective deferral or an elective contribution (as applicable) for purposes of the matching contribution requirement under a basic safe harbor 401(k) plan or an automatic enrollment safe harbor 401(k) plan, as well as for purposes of the Section 401(m) safe harbors. Employers are permitted to apply the ADP test separately to employees who receive matching contributions on account of qualified student loan payments. Employer may rely on employee certification of payment.

Guidance and/or Correction Bills:

- 8/19/24 IRS Releases Guidance on Student Loan Repayment Matching Contributions

Additional Resources:

- NAGDCA Student Loan Provisions Webinar (05/11/23)

Section 113.

(last updated 1/19/2023)

Title: Small immediate financial incentives for contributing to a plan

Effective Date: Effective for plan years beginning after the date of enactment.

Mandatory or Optional: Optional

Plans Affected: 401(k); 403(b)

Previous Law: The current law contingent benefit rule prohibits 401(k) and 403(b) plan participants from receiving financial incentives (other than matching contributions) for contributing to a plan.

SECURE 2.0 Law: Allows participants to receive de minimis financial incentives (not paid for with plan assets) for contributing to a 401(k) or 403(b) plan, such as gift cards for small amounts, by providing an exemption from the contingent benefit rule and providing relief from the Internal Revenue Code ("Code") and ERISA prohibited transaction rules.

Guidance and/or Correction Bills:

- None

Section 115.

(last updated 3/15/2023)

Title: Withdrawals for certain emergency expenses

Effective Date: Effective for distributions made after December 31,2023.

Mandatory or Optional: Optional

Plans Affected: All

Previous Law: Current law imposes a 10% penalty on early withdrawals before normal retirement age from tax-preferred retirement accounts.

SECURE 2.0 Law: Allows one penalty-free withdrawal of up to $1,000 per year for "unforeseeable or immediate financial needs relating to personal or family emergency expenses." The withdrawal may be repaid within three years. Only one withdrawal per three-year repayment period is permitted if the first withdrawal has not been repaid.

Guidance and/or Correction Bills:

- None

Additional Resources:

- NAGDCA Emergency Savings Provision Webinar (03/15/23)

Section 125.

(last updated 1/10/2024)

Title: One-year reduction in period of service requirement for long-term, part-time workers

Effective Date: Generally effective for plan years beginning after December 31, 2024. The clarification that pre-2021 service may be disregarded for vesting purposes is effective as if included in the 2019 SECURE Act, so effective for plan years beginning after December.

Mandatory or Optional: Mandatory

Plans Affected: 401(k) and 403(b) plans

Previous Law: Under current law as amended by the SECURE Act, 401(k) plans generally must permit an employee to contribute to a plan if the employee worked at least 500 hours per year with the employer for at least three consecutive years and has met the minimum age requirement (age 21) by the end of the three-consecutive-year period.

In the case of employees who are eligible solely by reason of the rule for long-term, part-time employees, the employer may elect to exclude such employees from the nondiscrimination testing and coverage rules, and from the application of the top-heavy vesting and benefit rules, and such an employer is not required to make matching or nonelective contributions to such employees.

12-month periods beginning before January 1, 2021, are disregarded for purposes of its special eligibility rule for long-term, part-time employees (but not for vesting purposes).

SECURE 2.0 Law: Reduces from three to two the required years of service before long-term, part-time workers are eligible to contribute to a plan. Pre-2021 service is also disregarded for purposes of the vesting of employer contributions (and pre-2023 service is disregarded for eligibility and vesting purposes under the new, SECURE 2.0 parttime employee provision). Extends the long-term, part-time coverage rules to 403(b) plans that are subject to ERISA.

Guidance and/or Correction Bills:

- None

NAGDCA Action:

- 1/10/24 Technical Corrections Letter
- 1/10/24 Comment Letter to IRS and Treasury
- 10/24/23 NAGDCA Comment Letter
- 3/23/23 Letter to IRS and Treasury

Section 127.

(last updated 10/31/2024)

Title: Emergency savings accounts linked to individual account plans

Effective Date: Effective for plan years beginning after December 31, 2023.

Mandatory or Optional: Optional

Plans Affected: All

Previous Law: Some employers have begun offering emergency savings accounts ("ESAs") both inside and outside qualified plans. The "in plan" approach is complicated by a lack of clarity with respect to certain ERISA and Code issues.

SECURE 2.0 Law: Permits a plan sponsor to amend its plan to offer short-term emergency savings accounts ("ESAs") as part of a defined contribution plan. ESAs must be funded post-tax with Roth contributions, and participants may be automatically enrolled at a rate of up to 3% of compensation. Contributions are capped at $2500 (indexed for inflation) or a lower amount determined by the sponsor, and there cannot be minimum contribution or balance requirements. Participants must be allowed to take at least one withdrawal per month, and the first four withdrawals per year cannot be subject to fees. ESAs may be invested in cash, interest bearing deposit accounts, and principal preservation accounts, and there is a fiducia-ry safe harbor for automatic enrollment.

Guidance and/or Correction Bills:

- None

NAGDCA Action:

- 1/10/24 Technical Corrections Letter
- 10/24/23 NAGDCA Comment Letter
- 3/23/23 Letter to IRS and Treasury

Question & Answer (last updated 10/31/2024)

Does this section override state anti-garnishment laws to allow plans to automatically enroll participants into a pension-linked savings account (PLESA)?

- *No. While this section of the law does preempt state anti-garnishment laws, it does not apply to government plans because of the way it was drafted. Only plans that can currently auto enroll participants into their DC retirement plan can auto enroll participants into PLESAs.*

This section of SECURE 2.0 was written as an amendment to ERISA. Does that mean government plans cannot use PLESAs?

- *Yes, congressional staff has informed us that PLESAs are not currently available for government plans due to a drafting error in the original provision. We are working with them to have legislation reintroduced to allow government plans to use PLESAs in the future.*

Additional Resources:

- NAGDCA Emergency Savings Provision Webinar (03/15/23)

Section 128.

(last updated 1/19/2023)

Title: Enhancement of 403(b) plans

Effective Date: Effective for amounts invested after date of enactment.

Mandatory or Optional: N/A

Plans Affected: 403(b)

Previous Law: 403(b) plan investments are generally limited to annuity contracts and mutual funds. The IRS guidance indicates that 403(b) plans are permitted to invest in collective investment trusts (81-100 trusts), but such investment is generally prohibited by the securities laws.

SECURE 2.0 Law: Amends the Code to explicitly allow 403(b) plans with custodial accounts to invest in collective investment trusts. However, the legislation does not address the securities law issues that prohibit such investments in most cases.

Guidance and/or Correction Bills:

- None

Section 201.

(last updated 1/19/2023)

Title: Remove required minimum distribution barriers for life annuities

Effective Date: Calendar years ending after the date of enactment.

Mandatory or Optional: N/A

Plans Affected: All

Previous Law: All annuity payments must be non increasing or only increase following the limited exceptions. One exception is for annuity contracts purchased from insurance companies, which permits increases that meet an actuarial test. The current annuities actuarial test does not permit certain guarantees such as certain guaranteed annual increases, return of premium death benefits, and period certain guarantees for participating annuities.

SECURE 2.0 Law: Amends the RMD rules to relax these rules and permits commercial annuities that are issued in connection with any eligible retirement plan to provide additional types of payments, such as certain lump sum payments and annual payment increases at a rate less than 5% annually.

Guidance and/or Correction Bills:

- None

Section 202.

(last updated 1/19/2023)

Title: Qualifying longevity annuity contracts ("QLACs")

Effective Date: Generally effective for contracts pur-chased on or after enactment.

Mandatory or Optional: Optional

Plans Affected: All

Previous Law: Existing regulations limit the premiums an individual can pay for a QLAC to the lesser of $125,000 (indexed) or 25% of the individual's account balance. It also provides for other restrictions on non-spouse death benefits.

SECURE 2.0 Law: Eliminates the 25% limit and increases the dollar limit from $125,000 (indexed) to $200,000 (indexed). Clarifies that a divorce occurring after a QLAC is purchased but before payments begin will not affect the permissibility of the joint and survivor benefits under the contract. Further clarifies that employees may rescind a contract during the 90-day trial period ("short free-look period").

Guidance and/or Correction Bills:

- None

Section 204.

(last updated 1/19/2023)

Title: Eliminating a penalty on partial annuitization

Effective Date: Effective upon enactment. Taxpayers can rely on their reasonable good faith interpretation of this rule until Treasury regulations are updated.

Mandatory or Optional: N/A

Plans Affected: All

Previous Law: Current regulations provide that if a retirement account holds an annuity contract and other assets, the RMD is calculated by bifurcating the account into the annuity contracts (which follow defined benefit plan rules) and the other assets (which follow defined contribution plan rules). This approach can result in higher RMDs than if the account did not hold annuity contracts.

SECURE 2.0 Law: Directs the Secretary of the Treasury to update the applicable regulations as follows: to calculate the RMD for a retirement account that holds annuity contracts and other assets, the employee may elect to have the RMD calculated by applying the defined contribution rules to the entire account. In performing that calculation, the account balance will include the value of the annuity contracts, and the payments from those annuity contracts will be applied toward satisfying the RMD.

Guidance and/or Correction Bills:

- None

Section 301.

(last updated 1/19/2023)

Title: Recovery of retirement plan overpayments

Effective Date: Effective upon enactment with certain retroactive relief for prior good faith interpretations of existing guidance.

Mandatory or Optional: N/A

Plans Affected: 401(a); 403(a); 403(b)

Previous Law: Fiduciaries for plans that have mistakenly overpaid a participant must take reasonable steps to recoup such overpayment, such as collecting the overpayment from the participant or employer in order to maintain the tax-qualified status of the plan and comply with ERISA. EPCRS includes various procedures for correcting overpayments made from defined benefit and defined contribution plans. The Pension Benefit Guaranty Corporation ("PBGC") also has overpayment recoupment policies for terminating defined benefit plans.

SECURE 2.0 Law: A 401(a), 403(a), 403(b), and governmental plan (but not including a 457(b) plan) will not fail to be a tax favored plan merely because the plan fails to recover an "inadvertent benefit overpayment" or otherwise amends the plan to permit this increased benefit. In certain cases, the overpayment is also treated as an eligible rollover distribution. There is also fiduciary relief for failure to make the plan whole. However, the plan sponsor must still satisfy minimum funding requirements and prevent/restore an impermissible forfeiture.

Guidance and/or Correction Bills:

- None

Section 302.

(last updated 1/19/2023)

Title: Reduction in excise tax on certain accumulations in qualified retirement plans

Effective Date: Effective for taxable years beginning after the date of enactment.

Mandatory or Optional: N/A

Plans Affected: All

Previous Law: Existing law imposes an excise tax on an individual if the amount distributed to an individual during a taxable year is less than the RMD under the plan for that year. The excise tax is equal to 50% of the shortfall (that is, 50% of the amount by which the RMD exceeds the actual distribution). (The excise tax may be abated under a reasonable cause exception or through a VCP submission.)

SECURE 2.0 Law: Reduces the excise tax for failure to take RMDs from 50% of the shortfall to 25%. Further reduces the excise tax to 10% if the individual corrects the shortfall during a two-year correction window.

Guidance and/or Correction Bills:

- None

Section 303.

(last updated 1/19/2023)

Title: Retirement savings lost and found

Effective Date: Directs the creation of the database no later than two years after the date of enactment of SECURE 2.0.

Mandatory or Optional: N/A

Plans Affected: All

Previous Law: N/A

SECURE 2.0 Law: Directs the DOL to create an online searchable "Lost and Found" database to collect information on benefits owed to missing, lost or non-responsive participants and beneficiaries in tax-qualified retirement plans and to assist such plan participants and beneficiaries in locating those benefits.

Guidance and/or Correction Bills:

- None

Section 304.

(last updated 1/19/2023)

Title: Updating dollar limit for mandatory distributions

Effective Date: Effective for distributions after December 31, 2023.

Mandatory or Optional: Optional

Plans Affected: All

Previous Law: Under current law, employers may immediately distribute without the consent of the participant and directly rollover former employees' retirement accounts from a workplace retirement plan into an IRA if their balances are no more than $5,000

SECURE 2.0 Law: Increases the involuntary cash-out limit to $7,000 from $5,000.

Guidance and/or Correction Bills:

- None

Section 306.

(last updated 1/19/2023)

Title: Eliminate the "first day of the month" requirement for governmental Section 457(b) plans

Effective Date: Effective for taxable years beginning after the date of enactment.

Mandatory or Optional: N/A

Plans Affected: 457(b)

Previous Law: Currently, participants in a 457(b) plan generally may only defer compensation if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

SECURE 2.0 Law: Conforms rule for governmental 457(b) plans to rule for 401(k) and 403(b) plans by allowing participants of governmental 457(b) plans to change their deferral rate at any time before the compensation is available to the individual. For tax-exempt 457(b) plans, participants may defer compensation for any calendar month only if an agreement providing for such deferral has been entered into before the beginning of such month.

Guidance and/or Correction Bills:

- None

Section 308.

(last updated 1/19/2023)

Title: Distributions to firefighters

Effective Date: Effective for distributions made after the date of enactment.

Mandatory or Optional: Mandatory

Plans Affected: All

Previous Law: Current law permits "qualified public safety employees" in a governmental plan to take retirement withdrawals beginning at age 50 after separation from service without incurring a 10% early withdrawal penalty.

SECURE 2.0 Law: Extends the age 50 early withdrawal exception for qualified public safety employees to also apply to private sector firefighters receiving distributions from a qualified retirement plan or 403(b) plan.

Guidance and/or Correction Bills:

- None

Section 309.

(last updated 1/19/2023)

Title: Exclusion of certain disability-related first responder retirement payments

Effective Date: Effective for plan years beginning after December 31, 2026.

Mandatory or Optional: Mandatory

Plans Affected: 401(a); 403(a); 403(b); 457(b)

Previous Law: Disability-related retirement plan payments are typically included in the recipient's taxable income.

SECURE 2.0 Law: For first responders, excludes service-connected, disability pension payments (from a 401(a), 403(a), governmental 457(b), or 403(b) plan) from gross income after reaching retirement age up to an annualized excludable disability amount.

Guidance and/or Correction Bills:

- None

Section 311.

(last updated 1/19/2023)

Title: Repayment of qualified birth or adoption distribution limited to three years

Effective Date: Effective for distributions made after the date of the enactment. For prior distributions, the repayment period ends December 31, 2025.

Mandatory or Optional: Optional

Plans Affected: All

Previous Law: Following the SECURE Act, current law does not limit the period during which a qualified birth or adoption distribution may be repaid and qualify as a rollover distribution.

SECURE 2.0 Law: Requires qualified birth or adoption distributions to be recontributed within three years of the distribution in order to qualify as a rollover contribution. (This aligns the rule with similar disaster relief provisions and simplifies plan administration.)

Guidance and/or Correction Bills:

- None

Section 312.

(last updated 4/4/2023)

Title: Employer may rely on employee certifying that deemed hardship distribution conditions are met

Effective Date: Effective for plan years beginning after the date of enactment.

Mandatory or Optional: Optional

Plans Affected: 401(k); 403(b); a similar rule applies to 457(b) plans.

Previous Law: Applicable Treasury regulations provide that hardship distributions may be made on account of an immediate and heavy financial need or

an unforeseeable emergency, if limited to the amount necessary to satisfy the financial need. These needs are evaluated using facts and circumstances, but there are certain safe harbor events that are deemed to be on account of a hardship. Employees must provide a written representation that they have insufficient cash or liquid assets reasonably available to satisfy the need. (In general, the employee must submit records documenting the safe harbor event constituting a hardship, although there is a streamlined hardship documentation method outlined in the Internal Revenue Manual that uses a self-certification process if certain requirements are met.)

SECURE 2.0 Law: Allows a plan administrator to rely on an employee's selfcertification that they have had a safe harbor event that constitutes a deemed hardship for purposes of taking a hardship withdrawal from a 401(k) plan or a 403(b) plan.

The administrator can also rely on the employee's certification that the distribution is not in excess of the amount required to satisfy the financial need and that the employee has no alternative means reasonably available to satisfy the financial need.

A similar rule applies for purposes of unforeseeable emergency distributions from governmental Section 457(b) plans.

Guidance and/or Correction Bills:

- None

Question & Answer (last updated 4/4/2023)

Considering that self-certifying UE's is optional, if an entity decides to allow self-certifying of UE's are they allowed to enact caps restricting the amount to be self-certified? Also, are they able to restrict the frequency of self-certifying?

- *Yes. Plan sponsors can create any limits they choose on self-certification provisions.*

Can the self-certification process be used for 457 plans? It states that 'a similar rule applies for purposes of unforeseeable emergency distributions from governmental Section 457(b) plans'. Do we know the wording of this 'similar rule' or where I can find the actual rule?

- *Yes. We are seeking further guidance.*

Section 314.

(last updated 1/19/2023)

Title: Penalty-free withdrawal from retirement plans for individual in case of domestic abuse

Effective Date: Effective for distributions made after December 31, 2023.

Mandatory or Optional: Optional

Plans Affected: 401(k); 403(b); 457(b)

Previous Law: N/A

SECURE 2.0 Law: Permits certain penalty-free early withdrawals in the case of domestic abuse in an amount not to exceed the lesser of $10,000 (indexed) or 50% of the value of the employee's vested account under the plan.

In addition, such eligible distributions to a domestic abuse victim (defined by the amendment to Code Sec. 72(t)(2)(K)(iii)(II)) may be recontributed to applicable eligible retirement plans, subject to certain requirements. (This is similar to the QBAD provision.) This also provides for an in-service distribution event for 401(k), 403(b), and governmental 457(b) plans.

Guidance and/or Correction Bills:

- None

Section 325.

(last updated 1/19/2023)

Title: Roth plan distributions

Effective Date: Effective generally for taxable years beginning after December 31, 2023, but not with respect to distributions required before January 1, 2024.

Mandatory or Optional: N/A

Plans Affected: All

Previous Law: Under current law, Roth IRAs – but not Roth amounts in 401(k), etc. plans – are exempt from pre-death RMD rules.

SECURE 2.0 Law: Extends the pre-death RMD exemption to Roth amounts in plans.

Guidance and/or Correction Bills:

- None

Section 326.

(last updated 1/19/2023)

Title: Exception to penalty on early distributions from qualified plans for individuals with a terminal illness

Effective Date: Effective upon enactment.

Mandatory or Optional: Optional

Plans Affected: All

Previous Law: Present law imposes a 10% tax penalty on early distributions from tax-preferred retirement accounts unless certain exceptions apply.

SECURE 2.0 Law: Creates an exception to the 10% early withdrawal penalty for distributions to individuals whose physician certifies that they have an illness or condition that is reasonably expected to result in death in 84 months or less.

Guidance and/or Correction Bills:

- None

Section 327.

(last updated 1/19/2023)

Title: Surviving spouse election to be treated as employee

Effective Date: Effective for calendar years beginning after December 31, 2023.

Mandatory or Optional: Mandatory

Plans Affected: All

Previous Law: Current law allows a sole designated spousal beneficiary to treat a deceased IRA owner's IRA as their own for purposes of RMD rules.

SECURE 2.0 Law: Provides similar post-death spousal RMD rules to plans: Allows a spousal beneficiary to irrevocably elect to be treated as the employee for RMD purposes and if the spouse is the employee's sole designated beneficiary, the applicable distribution period after the participant's year of death is determined under the uniform life table.

Guidance and/or Correction Bills:

- None

Section 328.

(last updated 1/19/2023)

Title: Repeal of direct payment requirement on exclusion from gross income of distributions from governmental plans for health and long-term care insurance

Effective Date: Effective for distributions made after the date of enactment.

Mandatory or Optional: Optional

Plans Affected: All

Previous Law: Current law provides an exclusion from gross income for up to $3,000 for distributions made by governmental retirement plans to pay for health insurance premiums of certain eligible retired public safety officers, provided the premiums are paid directly by the plan.

SECURE 2.0 Law: Allows the plan to distribute funds to pay for qualified health insurance premiums (1) directly to the insurer or (2) directly to the participant (but the participant must include a self-certification that such funds did not exceed the amount paid for premiums in the year of the distribution when filing the tax return for that year).

Guidance and/or Correction Bills:

- None

Section 329.

(last updated 1/19/2023)

Title: Modification of eligible age for exemption from early withdrawal penalty

Effective Date: Effective for distributions made after the date of enactment.

Mandatory or Optional: N/A

Plans Affected: All

Previous Law: Qualified public safety employees may receive distributions from governmental plans after separating from service after attaining age 50 without being subject to the 10% early withdrawal penalty.

SECURE 2.0 Law: Extends the age 50 exception to the 10% early withdrawal penalty to those qualified public safety employees who have separated from service and have attained age 50 or 25 years of service, whichever comes first.

Guidance and/or Correction Bills:

- None

Section 330.

(last updated 1/19/2023)

Title: Exemption from early withdrawal penalty for certain state and local government corrections employees

Effective Date: Effective for distributions made after the date of enactment.

Mandatory or Optional: N/A

Plans Affected: All

Previous Law: Qualified public safety employees may receive distributions from governmental plans after separating from service after attaining age 50 without being subject to the 10% early withdrawal penalty.

SECURE 2.0 Law: Expands the definition of qualified public safety employee to include certain corrections officers and forensic security employees, thus making them eligible for the age 50 exception to the 10% early withdrawal penalty.

Guidance and/or Correction Bills:

- None

Section 331.

(last updated 1/19/2023)

Title: Special rules for the use of retirement funds in connection with qualified federally declared disasters

Effective Date: Effective for disasters occurring on or after January 26, 2021.

Mandatory or Optional: Optional

Plans Affected: All

Previous Law: In recent years, Congress has eased plan distribution and loan rules in cases of disaster on a case-by-case basis.

SECURE 2.0 Law: Provides permanent special rules governing plan distributions and loans in cases of qualified federally declared disasters.

- Up to $22,000 may be distributed to a participant per disaster;
- Amount is exempt from the 10% early withdrawal fee;
- Inclusion in gross income may be spread over 3-year period;
- Amounts may be recontributed to a plan or account during the 3-year period beginning on the day after the date of the distribution;
- Allows certain home purchase distributions to be recontributed to a plan or account if those funds were to be used to purchase
- a home in a disaster area and were not so used because of the disaster; and
- Increases the maximum loan amount for qualified individuals and extends the repayment period.

Guidance and/or Correction Bills:

- None

Section 334.

(last updated 1/19/2023)

Title: Long-term care contracts purchased with retirement plan distributions

Effective Date: Effective beginning with distributions three years after the date of enactment.

Mandatory or Optional: Optional

Plans Affected: All

Previous Law: Plans may only make distributions for approved reasons. Existing law provides favorable tax treatment for various forms of health and disability insurance. Existing law also imposes a 10% tax penalty on early distributions from taxpreferred retirement accounts unless certain exceptions apply.

SECURE 2.0 Law: Permits retirement plans to distribute a certain amount per year for certain long-term care insurance contracts. The amount permitted to be distributed is the lowest of: (1) the amount paid by or assessed to the employee during the year for long-term care insurance; (2) 10% of the employee's vested accrued benefit in the plan; or (3) $2,500 (this dollar amount will be indexed for inflation beginning in 2025). Distributions from plans and IRAs would be exempt from the 10% penalty on early distributions if used to pay premiums for high quality, long-term care insurance.

Guidance and/or Correction Bills:

- None

Section 338.

(last updated 1/19/2023)

Title: Requirement to provide paper statements in certain cases

Effective Date: Effective for plan years beginning after December 31, 2025.

Mandatory or Optional: Optional for Government Plans

Plans Affected: All

Previous Law: ERISA requires plan administrators to periodically furnish participants and beneficiaries with statements describing the individual's benefit under the plan. In defined contribution plans, benefit statements must be provided at least once each calendar quarter, if the participant has the right to direct investments, and at least once each calendar year in other cases. In defined benefit plans, benefit statements must generally be delivered at least once every three years. DOL disclosure regulations include various document delivery safe harbors. DOL updated the disclosure regulations in 2020 to add a new safe harbor to the two existing safe harbors: (i) the 2002 safe harbor generally applies to individuals who either have (a) the ability to effectively access electronic documents at work through an electronic system, the use of which is an integral part of the employee's duties; or (b) consented to receive notices electronically; and (ii) the 2020 safe harbor allows a plan administrator to utilize electronic media to furnish retirement plan notices where the plan administrator complies with certain notice, access, and other requirements and the participant does not opt-out of electronic disclosure.

SECURE 2.0 Law: Modifies the pension benefit statements requirement to generally require that:

- for a defined contribution plan, at least one statement must be provided on paper in written form for each calendar year; and
- for a defined benefit plan, at least one statement must be provided on paper every three years.

Exceptions allowed for plans that allow employees to opt in to e-delivery if the plan follows the 2002 safe harbor.

Also directs the Secretary to make changes by December 31, 2024 to the e-delivery rules to include certain participant protections including requiring a one-time initial paper notice, prior to the first pension benefit statement being delivered electronically, informing the participant of her right to receive all required disclosures on paper.

Guidance and/or Correction Bills:

- None

Section 339.

(last updated 1/19/2023)

Title: Recognition of Tribal government domestic relations orders

Effective Date: Effective for domestic relations orders received by plan administrators after December 31, 2022, including any such order which is submitted for reconsideration after such date.

Mandatory or Optional: Optional

Plans Affected: All

Previous Law: Under present law, plan administrators cannot assign the benefit of a participant pursuant to a domestic relations order issued by a Tribal government.

SECURE 2.0 Law: Allows domestic relations orders issued by Indian tribal governments to be recognized as "qualified domestic relations orders" to provide the same exception for Tribal domestic relations orders from the prohibition on assignment or alienation of benefits as had previously applied to State issued domestic relations orders.

Guidance and/or Correction Bills:

- None

Section 348.

(last updated 1/19/2023)

Title: Cash balance

Effective Date: Effective for plan years beginning after the date of enactment.

Mandatory or Optional: N/A

Plans Affected: All

Previous Law: Cash balance and other "hybrid" plans are subject to numerous technical rules that make it difficult to offer market-based designs.

SECURE 2.0 Law: Permits a cash balance plan with variable interest crediting rates to use a projected interested crediting rate that is "reasonable" but not in excess of 6%. The practical consequence of this change is that plans will be permitted to provide larger pay credits for older, longer service workers without the risk of failing the antibackloading rules.

Guidance and/or Correction Bills:

- None

Section 350.

(last updated 1/19/2023)

Title: Safe harbor for correction of employee elective deferral failures

Effective Date: Effective for any errors with respect to which the date that is 9½ months after the end of the plan year during which the error occurred is after December 31, 2023.

Mandatory or Optional: N/A

Plans Affected: 401(a); 403(b); 457(b); IRAs

Previous Law: The IRS' Employee Plans Compliance Resolution System (EPCRS) contains rules allowing plans to correct errors, including with respect to missed deferrals under automatic enrollment or automatic escalation features. EPCRS currently contains a safe harbor for correcting automatic enrollment failures, which is set to expire on December 31, 2023.

SECURE 2.0 Law: Creates a safe harbor that a plan will not fail to be a qualified plan merely because of a corrected error. A "corrected error" is a reasonable administrative error made in implementing automatic enrollment, automatic escalation features, or by failing to offer an affirmative election due to the employee's improper exclusion from the plan, so long as that error is corrected within 9 ½ months of the end of the plan year in which the error occurred (or date on which employee notifies the plan sponsor of the error, if earlier), is resolved favorably toward the participant and without discrimination toward similarly situated participants, and notice is provided within 45 days of the date on which correct deferrals begin. This new safe harbor does not require a corrective contribution for missed deferrals, but the plan sponsor must contribute any missed matching contributions, plus earnings. The safe harbor is available for 401(a), 403(b) and 457(b) plans and IRAs.

Guidance and/or Correction Bills:

- None

Section 501.

(last updated 1/19/2023)

Title: Provisions relating to plan amendments

Effective Date: Effective upon enactment.

Mandatory or Optional: N/A

Plans Affected: All

Previous Law: Current law generally requires plan amendments to reflect legal changes to be made by the tax filing deadline for the employer's taxable year in which the change in law occurs (including extensions).

The Code and ERISA provide that, in general, accrued benefits cannot be reduced by a plan amendment (the "anticutback rule").

Individually designed plans have the Required Amendment List that provides some additional time for amendments.

SECURE 2.0 Law: Allows plan amendments made pursuant to this bill to be made by the end of the 2025 plan year (2027 plan year in the case of governmental plans and collectively bargained plans) as long as the plan operates in accordance with such amendments as of the effective date of a legislative or regulatory requirement or amendment. If a plan operates as such and meets the amendment timeline and requirements of this bill, then the plan will be treated as being operated in accordance with its terms, and the amendment will not violate the anti-cutback rule (unless so designated by the Secretary).

Extends the plan amendment deadlines under the SECURE Act, CARES Act, and Taxpayer Certainty and Disaster Relief Act of 2020 to these new remedial amendment period dates, as previously reflected in IRS notices.

Guidance and/or Correction Bills:

- None

Section 602.

(last updated 1/19/2023)

Title: Hardship withdrawal rules for 403(b) plans

Effective Date: Effective for plan years beginning after December 31, 2023.

Mandatory or Optional: N/A

Plans Affected: 403(b)

Previous Law: Prior to the Bipartisan Budget Act of 2018 ("BBA"), the hardship rules for 401(k) plans and 403(b) plans were generally the same. The BBA created some differences, primarily allowing 401(k) plans to make hardship distributions from more contribution sources, such as qualified nonelective contributions ("QNECs"), and earnings on elective deferrals.

SECURE 2.0 Law: Conforms the hardship distribution rules for Section 403(b) plans to those of Section 401(k) plans. Therefore, a 403(b) plan may distribute QNECs, qualified matching contributions, and earnings on any of these contributions (including elective deferrals). Also confirms that distributions from a 403(b) plan are not treated as failing to be made upon hardship solely because the employee does not take available loans.

Guidance and/or Correction Bills:

- None

Section 603.

(last updated 10/24/2023)

Title: Elective deferrals generally limited to regular contribution limit

Effective Date: Effective for taxable years beginning after December 31, 2023, extended to December 31, 2025 through IRS notice 2023-62.

Mandatory or Optional: Mandatory (if offered)

Plans Affected: All

Previous Law: Catch-up contributions to Section 401(k), 403(b), and governmental 457(b) plans (if age 50 or older) may be made on either a pre-tax or Roth basis.

SECURE 2.0 Law: Catch up contributions to Section 401(a) qualified plans, Section 403(b) plans, and governmental Section 457(b) plans must be made to on a Roth basis, except for eligible participants whose prior year wages do not exceed $145,000 (indexed for inflation). This requirement does not apply to SIMPLE IRAs or SEP plans.

Guidance and/or Correction Bills:

- IRS Notice 2023-62: Guidance on Section 603 of the SECURE 2.0 Act with Respect to Catch-Up Contributions (08/25/23)

NAGDCA Action:

- 10/24/23 NAGDCA Comment Letter
- 6/29/23 Joint Action Letter
- 6/7/23 American Benefits Council Letter Requesting Delayed Effective Date
- 5/23/23 Letter from the Four Corners on SECURE 2.0 Technical Corrections
- 5/15/23 NAGDCA Catch-Up Letter to House and Senate Committee Members
- 3/23/23 Letter to IRS and Treasury

Question & Answer *(last updated 9/11/2023)*

All answers marked with an asterisk (*) are pending verification from the IRS.

Tax Treatment

Why was $145,000 picked for the limit to determine whether catch-up contributions would be Roth or Pre-Tax?

- *Unclear.*

If a participant is over the $145,000 income threshold the previous year, must all their current contribution dollars be treated as Roth, or only those falling under the 50+ or new 60-63 catch-up provision?

- *No. Section 603 only affects these participant's catch-up contributions. Participants making more than $145,000 in the preceding year could still choose to make their regular contributions pre-tax.*

Is the $145,000 gross income or taxable income?

- *Income is FICA wages as defined in Code §3121(a).*

Can we require that all age-based catch-up provisions be made as Roth, regardless of previous year's salary?

- *Unclear. Requiring all catch-up contributions, regardless of income, be made as Roth is not directly addressed. The IRS may provide additional guidance on this point.**

Can we restrict all age-based catch-up contributions to employees whose previous year's salary was $145,000 or less?

- *Unclear. Recently, Treasury suggested they are considering guidance that would allow plans without Roth to provide catch-up contributions only to employees who made less than $145,000 the previous year. We expect further guidance on this issue.**

<u>Timeline</u>
Do plans have to adopt the changes in 2024, but have an additional 3 years to change the plan document to reflect this?

- *No. Based on recent Treasury guidance, plans have an administrative transition period that allows them to maintain their current catch-up program while working to implement the changes in Section 603 by December 31, 2025. Plan documents still need to be amended by December 31, 2026.*

<u>Income Verification</u>
Is the plan sponsor responsible for verifying participant salary relative to the $145,000 threshold if they did not work for an employer in the plan the previous year?

- *Unclear, but it appears "no." Section 603 states that the employer, not the plan sponsor is responsible for verifying income from the employer. State plans with multiple state and local employers will need guidance from the IRS on the definition of "employer".*

  *Recent Treasury guidance suggested they are considering a rule that would allow income from only the primary employer to be used to determine salary for multiple employer plans. However, this was not finalized, and we expect further guidance soon.**

If a participant works for more than one participating employer simultaneously and contributes to the plan under both, who is responsible for coordinating the compensation totals among those employers to ensure the plan tracks the total compensation?

- *Unclear. Treasury recently suggested they are considering guidance to alleviate the plan sponsor from having to aggregate data for employees receiving a salary from more than one employer in the plan. While this guidance addresses this question directly, it was categorized as "guidance under consideration", and has not officially been addressed by the Treasury or IRS.*

Who is responsible for income verification in multi-employer plans?

- *The employer. Section 603 states that the employer, not the plan sponsor is responsible for verifying income from the employer. State plans with multiple state and local employers will need guidance from the IRS on the definition of "employer". **

  Multi-employer may need to update their existing joinder or other participation agreements with political subdivisions to require income verification by the employer.

Would it be acceptable to ask the participant prior to making their election if they made over $145,000 in the prior year?

- *No. SECURE 2.0 does not allow for self-certification in this instance.*

Special Catch-up Provisions

Does Section 603 affect the 457 special catch-up provision?

- *No.*

Does Section 603 affect the 403b 15-year catch-up?

- *No.*

Statutory Plans

Does this federal law preempt state laws and automatically allow a plan to add Roth if the state statute does not?

- *No. This Section of SECURE 2.0 does not preempt state law. If a plan is created by statute, and does not allow Roth contributions, the statute must be changed to allow Roth contributions and for the plan to be able to offer catch-up contributions.*

Plans without Roth

If we currently do not offer Roth, are we required to suspend or terminate age 50+ catch-up contributions for all employees regardless of income until we add the Roth options for our plans?

- *Yes. Plans must have a Roth option to allow catch-up contributions starting in 2026. However, recent Treasury guidance suggested they are considering a rule that would allow plans without Roth to offer catch-up contributions to employees with previous year salaries below $145,000. We expect this to be addressed definitively in future guidance.**

Elections

Can this be a one-time election instead of every year?

- *Yes.*

Can excess deferrals for employees over the age of 50 be automatically treated as catch-up contributions and made into Roth deferrals if the participant is over the income threshold?

- *Unclear. This is not directly addressed in the provision. In the absence of IRS guidance, it may be possible to amend a plan and to draft the initial election forms such that participants elect to*

have excess deferrals treated as catch-up deferrals including switching to Roth deferrals in the event the participant's preceding year wages exceed the wage limit.*

Plans must comply with the section 603 requirement allowing employee election for catch-up contribution type, and section 604 indicates the IRS may issue regulations on a participant's ability to change their election if their compensation is determined to exceed the wage limitation after the election is made.

What is the correction mechanism if a participant making $145,000 or more in the preceding year is making pre-tax contributions and has excess pre-tax deferrals treated as catch-up contributions?

- *Unclear. Further IRS guidance is needed on the proper correction mechanism. Potential corrections such as recategorization as Roth or in-plan conversion may be available. However, these likely would require payroll system updates, adjustments to the W-2 and remitting additional taxes from future paychecks*.*

  Absent IRS guidance, the current EPCRS procedures might require the non-Roth catch-up contributions be viewed as "excess amounts." Those excess amounts, adjusted for earnings, would then be made as a taxable corrective distribution to the participant and be reported as taxable income on a Form 1099-R. If the error is caught in the same plan year, future catch-up contributions should then be contributed as Roth.

Additional Resources:

- NAGDCA Roth Catch-Up Guidance Webinar (09/30/23)

Section 604.

(last updated 1/19/2023)

Title: Optional treatment of employer matching or nonelective contributions as Roth contributions

Effective Date: Effective for contributions made after enactment.

Mandatory or Optional: Optional

Plans Affected: 401(a); 403(b); 457(b)

Previous Law: Current law does not permit employer matching or nonelective contributions to be made on a Roth basis.

SECURE 2.0 Law: Allows a Section 401(a) qualified plan, a Section 403(b) plan, or a governmental 457(b) plan to permit employees to designate employer matching or nonelective contributions as Roth contributions. Student loan matching contributions may also be designated as Roth contributions. Matching and nonelective contributions designated as Roth contributions are not excludable from the employee's income, and must be 100% vested when made.

Guidance and/or Correction Bills:

- None