SECURE 2.0
SECURE ACT PROVISIONS EFFECTIVE IN 2023

Treatment of Employer Matching or Nonelective Contributions as Roth

Effective for contributions made after December 29, 2022.

- Plan sponsors of 401(k), 403(b) and governmental 457(b) plans **may** permit participants to designate fully vested employer matching and nonelective contributions as Roth contributions.
- Matching contributions and nonelective contributions designated as Roth contributions are not excludable from income.
- Future earnings would not be taxable if distributed as a "qualified Roth distribution."

**Please note that we are waiting for further guidance from the IRS regarding this provision.*

Increase in Required Minimum Distribution (RMD) Age

Applies to 401(k), 403(b) and 457(b) Plans.

- Increased from age 72 to age 73 on January 1, 2023.
- Will increase to age 75 on January 1, 2033.
- The penalty for a missed RMD is reduced from 50% to 25%. If the mistake is corrected in a timely manner, the penalty is further reduced to 10%. A timely correction generally means taking the missed RMD and filing Form 5329 by the end of the second calendar year following the year the RMD was due.

Employer may rely on Self-Certification for Hardship Withdrawals

- 401(k) and 403(b) plans can rely on employee certification that the hardship is:
  - For one of the safe harbor reasons,
  - Withdrawal request does not exceed the amount needed to alleviate the hardship (This amount may be grossed up for taxes), and
  - The employee does not have any other reasonably available resources to satisfy the hardship (This was previously permitted).
- The above criteria also apply to an unforeseeable financial emergency distribution from a governmental 457(b) Plan.

Use of Funds for Qualified Federally Declared Disasters

- The plan sponsors of 401(k), 403(b) and 457(b) plans **may** allow up to $22,000 to be distributed from employer retirement plans or IRAs for affected individuals.
- These distributions are not subject to the 10% additional tax and are taken into account as gross income over 3 years.
- Distributions can be repaid to a tax-preferred eligible retirement account.
- Amounts distributed prior to the disaster to purchase a home can be re-contributed, and an employer is permitted to provide for a larger amount to be borrowed from a plan by affected individuals and for additional time for repayment of plan loans owed by affected individuals (up to a maximum of $100,000 or 100% of the vested account balance).

Eliminating Unnecessary Reporting to Unenrolled Participants

- Plan sponsors of 401(k) and 403(b) plans will no longer be required to provide certain legal notices to unenrolled participants.
- The plan sponsor is required to send an annual reminder notice of a participant's eligibility to participate in the plan and any applicable election deadlines.
- The plan sponsor must send any otherwise required document requested at any time by the participant.
- This rule applies only with respect to an unenrolled participant who received the SPD and other required notices in connection with initial eligibility.

Removed 'First Day of the Month' Requirement for Certain 457(b) Plans

- Participants in governmental 457(b) plans may make deferral changes at any time prior to the date that the compensation being deferred is available.