Danziger & Markhoff LLP
Summary of Select Qualified Retirement Plan Provisions of the SECURE 2.0 Act of 2022
January 26, 2023

Section	Provisions	Effective Date	Optional or Required?	D&M Comments
101	**Mandatory Automatic Enrollment and Deferral Percentage Escalation For New 401(k) Plans** 401(k) plans established after December 29, 2022 will be required to include automatic enrollment with automatic annual escalation of deferral percentages. • The initial automatic enrollment amount must be 3 – 10% of compensation (as prescribed in the plan). • Each year after an employee is automatically enrolled, his or her deferral percentage is increased by 1% until it reaches 10% but not more than 15% (as prescribed by the plan). • Employees can always opt out of participation or may opt for a different deferral amount. This requirement will not apply to businesses that normally employ 10 or fewer employees or that have been in business for less than 3 years.	Plan years beginning after December 31, 2024	Required	Automatic enrollment has long been advocated by some as a way to avoid employee inertia in the effort to boost retirement savings. Until now, automatic enrollment was an optional 401(k) plan feature, and many, especially small employers, have chosen not to include automatic enrollment in their 401(k) plans.
102	**Expansion of New Small Employer Retirement Plan Tax Credit** Building on changes made by the original SECURE Act, SECURE 2.0 expands the "new retirement plan" tax credit for small employers in two significant ways: • <u>Expanded Start-Up Credit</u>: Employers with up to 50 employees can now claim a tax credit for up to 100% (increased from 50%) of qualified plan startup costs, subject to other limitations, including an aggregate cap of $5,000 / year, for three years.	Taxable years beginning after December 31, 2022	N/A	Since tax credits are a direct dollar-for-dollar reduction in the employer's tax liability, tax credits are more valuable than tax deductions. These credits could substantially reduce the after-tax costs incurred by small employers to establish and initially administer and contribute to new retirement plans.

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	• <u>New Contribution Credit</u>: Employers with up to 50 employees can claim as a tax credit a percentage of employer contributions to a defined contribution plan on behalf of employees with wages of up to $100,000 (indexed for inflation) for the first five plan years. The percentages are 100% for the year the plan is established and the following year, 75% for the third year, 50% for the fourth year and 25% for the fifth year. The amount of the credit for any employee is limited to $1,000. The credit phases out for employers with between 51 and 100 employees. Importantly, the portion of such contributions equal to the amount of the credit is not tax-deductible.			
107	**Increase in Age for Required Minimum Distributions** A participant is generally required to begin taking distributions from their retirement account, referred to as "required minimum distributions" or RMDs, by their "required beginning date," which is April 1 following the year in which the participant attains a specified age. The original SECURE Act increased the RMD age from 70½ to 72. SECURE 2.0 further increases the RMD age to 73 (and to age 75 starting in 2033).	Distributions required to be made after December 31, 2022 for individuals who attain age 72 after that date	Required	If you were born: • before January 1, 1951, your RMD age is 72; or • on or after January 1, 1951, your RMD age is 73.
109	**Increased "Catch-Up" Contribution Limits for Participants Who Are Ages 60-63** 401(k) plan participants who have attained age 50 are permitted to make "catch up" contributions in excess of the otherwise applicable limit on elective deferrals. The indexed limit on catch-up contributions for 2023 is $7,500. SECURE 2.0 increases the catch-up contribution limit to the greater of $10,000 or 150% of the 2024 regular catch-up limit (both such amounts are indexed for inflation) for each of the years in which a participant attains ages 60, 61, 62 and 63.	Taxable years beginning after December 31, 2024	Required	

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110	**Option for 401(k) Plan Sponsors to "Match" Student Loan Payments** A 401(k) plan that includes employer matching contributions may treat certain student loan payments by a participant as elective deferrals for purposes of computing the participant's matching contribution. The amount of student loan payments eligible for matching contributions is subject to the individual limit on elective deferrals (generally $22,500 for 2023), reduced by actual salary reduction contributions made into the plan by the participant (i.e., no double-dipping).	Contributions made for plan years beginning after December 31, 2023	Optional	Internal Revenue Service guidance has permitted nonelective employer contributions tied to student loan repayment matching contributions for several years. The SECURE 2.0 change allows these contributions to be treated as true matching contributions.
114	**Deferral of Tax for Certain Sales of Employer Stock to S Corporation ESOPs** Section 1042 of the Internal Revenue Code of 1986, as amended (the "Code"), generally permits an individual owner of stock in a non-publicly traded C corporation that sponsors an employee stock ownership plan ("ESOP") to elect to defer the recognition of gain from the sale of such employer stock to the ESOP if the seller invests the sale proceeds in qualified replacement property such as stock or other securities issued by a U.S. operating corporation. Under existing law, Section 1042 treatment is unavailable for sales of employer stock to an ESOP sponsored by an S corporation. SECURE 2.0 expands Section 1042 deferral treatment to 10% of any gain realized by the seller on the sale of employer stock to an S corporation ESOP.	Sales made after December 31, 2027	N/A	Under existing law, S corporation shareholders who want to elect Section 1042 gain deferral on the sale of their employer stock to an ESOP must convert to a C corporation prior to the sale. While the Section 1042 expansion is historic and directionally helpful to S corporation owners, its 10% gain limitation is unlikely to result in any widespread change to this common strategy.
121	**Starter 401(k) Plans For Employers With No Retirement Plan** SECURE 2.0 established a new plan design, referred to as a starter 401(k) deferral only arrangement, for employers that do not currently sponsor a qualified retirement plan. A starter 401(k) plan would generally require all employees to be automatically enrolled in the plan at a deferral rate of 3 - 15% of compensation (unless the employee	Plan years beginning after December 31, 2023	Optional	

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	affirmatively elects otherwise). Annual contributions are limited to $6,000 plus another $1,000 as an age 50 or older catch-up (as such amounts are adjusted for inflation).			
125	**Expansion of Long-Term Part-Time Employee Coverage** The original SECURE Act required 401(k) plans to permit long-term part-time employees to make elective deferrals. Under the original SECURE Act a long-term part-time employee meant an employee who has at least 500 hours of service in each of 3 consecutive 12-month periods (beginning with 2021 service). SECURE 2.0 reduces the consecutive 12-month period requirement from 3 to 2. Under the original SECURE Act, if an employer provides employer contributions for long-term part-time employees, each 12-month period in which the employee completes 500 hours of service must be counted as a year of service for vesting purposes. SECURE 2.0 excludes pre-2021 service for vesting purposes.	The new 2-consecutive 12-month period rule applies to plan years beginning after December 31, 2024 and only takes into account 12-month periods beginning after December 31, 2022. Alignment of the exclusion of pre-2021 service for purposes of eligibility and vesting applies as if included in the original SECURE Act.	Required	Under the original SECURE Act, long-term part-time employees (determined using the 3 consecutive 12-month period rule) first need to be enrolled in 2024. Under SECURE 2.0, long-term part-time employees (determined using the 2 consecutive 12-month period rule) will first need to be enrolled in 2025. This is because the new rule only takes into account periods beginning in 2023. Long-term part-time employees are not required to receive employer contributions, such as profit-sharing, safe harbor or top-heavy contributions.
302	**Reduction in Excise Tax on Failure to Take RMD** The excise tax imposed on the amount of an RMD that is not timely paid is reduced from 50% to 25%. The excise tax can be further reduced to 10% if, within 2 years following the year of the missed RMD, and before IRS assesses the excise tax or mails a notice of deficiency,	Taxable years beginning after 2022	Required	This change does not affect existing rules that allow the plan administrator or plan participant to apply for a waiver of the excise tax. Notwithstanding this excise tax reduction, failure to timely make an

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	the individual receives all past due RMDs, files the necessary tax returns and pays the applicable taxes.			RMD can adversely affect the plan's tax-qualified status.
304	**Increased Dollar Limit for Mandatory Cash-Out** Under existing law, when a participant terminates employment, the employer's plan can transfer the participant's benefit to an individual retirement account ("IRA") without the participant's consent if the amount of the benefit does not exceed a specified amount. SECURE 2.0 increases the specified amount from $5,000 to $7,000.	Distributions made after December 31, 2023	Optional	This welcome change increasing the long-standing $5,000 cash-out limit will ease plan administration by making it easier to eliminate small accounts.
305	**Expansion of Self-Correction Under IRS Employee Plans Compliance Resolution System (EPCRS)** SECURE 2.0 significantly expands the ability of employers to self-correct plan errors under EPCRS. Plans can now self-correct "eligible inadvertent failures" at any time as long as the employer takes some action demonstrating a specific commitment to self-correct before IRS identifies the failure and self-correction is completed within a reasonable time. Use of this expanded self-correction, is conditioned on the plan sponsor having practices and procedures in place that are reasonably designed to promote and facilitate overall compliance with applicable tax law requirements. Eligible inadvertent failures expressly exclude egregious failures, diversion or misuse of plan assets and tax avoidance transactions.	IRS must update EPCRS by December 29, 2024	N/A	SECURE 2.0 effectively removes the deadline for self-correction currently in EPCRS (generally, three years after the year of the failure) for eligible inadvertent failures. It appears that plan sponsors may utilize the expanded self-correction under SECURE 2.0 prior to IRS updating EPCRS.
310	**Separate Application of Top-Heavy Rules to Employees Who Do Not Meet Age and Service Conditions in Defined Contribution Plans** Defined contribution plans are subject to "top-heavy" testing. A plan is top-heavy if the aggregate plan account balances of "key employees" (e.g., a more than 5% owner of the employer) is more than 60% of the aggregate plan account balances of all employees. A top-heavy plan is	Plan years beginning after December 31, 2023	Optional	If the top-heavy test is applied separately to excludable employees as a group, that portion of the plan will likely not be top-heavy because excludable employees are unlikely to be key employees. This would mean that even if the overall plan is

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	required to provide all employees who benefit under the plan with a minimum 3% of compensation employer contribution. Under existing rules, plans can exclude employees who do not meet the statutory minimum age 21 or one-year of service conditions. If a plan nevertheless covers any such excludable employees, SECURE 2.0 permits the plan to perform the top-heavy test separately for the class of non-excludable employees who participate in the plan and the class of excludable employees who participate in the plan. This change brings top-heavy testing in line with nondiscrimination testing which may be applied separately to non-excludable employees and excludable employees.			top-heavy, excludable employees who participate in the plan would not be required to receive a 3% top-heavy minimum contribution. This is a welcome change indeed for employers that would like to make 401(k) deferrals available to newly-hired employees without triggering additional top-heavy contributions, thereby reducing plan costs.
315	**Reform of "Minor Child" Family Attribution Rule** Under the Internal Revenue Code, certain related businesses (e.g., members of a "controlled group" or "affiliated service group") must be aggregated when performing required coverage and nondiscrimination tests (as well as for other purposes). These aggregation rules are generally based on the degree of common ownership of the businesses. In determining the level of ownership in a business, certain "attribution" rules apply. Attribution rules may result in an individual being "deemed" to own stock or other equity interests in a business that are actually owned by another individual. Under the existing family attribution rules, the fact that a couple has a minor child (under age 21) may result in ownership attribution between the couple that would not otherwise apply if the couple did not have a minor child. SECURE 2.0 removes this "minor child" family attribution rule.	Plan years beginning after December 31, 2023	Required	This "minor child" attribution rule has long been viewed as dubious and maybe even unintended. Once this welcome change is effective, the family attribution rules will apply to couples without regard to whether they have a minor child.
316	**Deadline to Adopt Plan Amendment Increasing Benefits Extended to Due Date of Income Tax Return (With Extensions)**	Plan years beginning after December 31, 2023	N/A	Oftentimes, an employer's tax position is only known after the end of its taxable year. We expect this

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	The original SECURE Act permits an employer to adopt a new retirement plan for a taxable year as long as the new plan is adopted by the due date of the employer's income tax return for that year (with extensions). SECURE 2.0 allows an employer to amend an existing plan to increase participant benefits (other than the amount of employer matching contributions) for a taxable year as long as the amendment is adopted by the due date of the employer's income tax return for that year (with extensions).			change will build on the original SECURE Act's extended date for adoption of a "new plan" and allow an employer to retroactively amend an existing plan to permit a greater tax-deductible contribution for that taxable year if the amendment is adopted by the due date of the employer's tax return for that year.
317	**Retroactive First Year Elective Deferrals for New Owner-Only Plans of Sole Proprietors and Single-Member LLCs** Under existing law, while an employer may adopt a new retirement plan for a taxable year by the due date of the employer's tax return for that year (with extensions), 401(k) contributions can only be made for the initial plan year if the plan is adopted prior to the end of that initial plan year. Under SECURE 2.0, where a new plan is sponsored by a sole proprietorship or single-member limited liability company ("LLC"), and the owner is the only employee of the plan sponsor, the owner is permitted to fund the plan for its initial plan year with employee elective deferral contributions at any time up to the due date of the owner's income tax return (determined without regard to extensions) for that initial year.	Plan years beginning after December 29, 2022	Optional	This provision may allow eligible employers to increase their first-year contribution to a new 401(k) plan.
325	**Elimination of Pre-Death Required Minimum Distributions for Roth Accounts in Retirement Plans** Under existing law, the required minimum distribution (RMD) rules apply to pre-death distributions from a Roth account in a qualified retirement plan. Under SECURE 2.0, qualified retirement plan	Generally taxable years beginning after December 31, 2023	Required	This change will conform retirement plan Roth accounts with the exemption of pre-death distributions from Roth IRAs from the RMD requirements.

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	participants are no longer required to take RMDs from a Roth account before death.			
327	**Surviving Spouse Election to be Treated As Employee For RMD Purposes** SECURE 2.0 allows a sole designated beneficiary surviving spouse to elect to be treated as the deceased participant in a qualified retirement plan for purposes of the required minimum distribution rules.	Calendar years beginning after December 31, 2023	Required	If a participant dies before RMDs have begun, this provision could allow a surviving spouse to delay taking RMDs from a qualified plan.
332	**SIMPLE IRA Plan May Be Replaced With Safe Harbor 401(k) Plan During a Plan Year** Under existing rules, a SIMPLE IRA plan must be maintained for a whole calendar year. A SIMPLE IRA plan can only be terminated by notifying employees within a reasonable time before November 2 that the plan will be discontinued effective the following January 1. SECURE 2.0 allows an employer to replace a SIMPLE IRA plan with a safe harbor 401(k) plan during a plan year.	Plan years beginning after December 31, 2023	Optional	This welcome mitigation of the extraordinarily inflexible requirement that an employer continue its SIMPLE IRA plan for an entire calendar year will allow an employer to replace its SIMPLE IRA with a safe harbor 401(k) plan during a plan year.
349	**Elimination of PBGC Variable Rate Premium Indexing** The variable rate premium for a single-employer defined benefit pension plan subject to PBGC is equal to the "applicable dollar amount" for each $1,000 (or fraction thereof) of unfunded vested benefits under the plan as of the close of the preceding plan year. Prior to SECURE 2.0, the applicable dollar amount was adjusted for inflation. SECURE 2.0 ends the indexing for inflation and sets the applicable dollar amount for calculating the variable rate premium at a flat $52 for each $1,000 of unfunded vested benefits.	December 29, 2022	N/A	This welcome elimination of widely-criticized variable rate premium indexing will significantly reduce premium costs for PBGC-covered defined benefit plans.

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603	**Catch-Up Contributions Mandatorily Treated as Roth For Employees Earning More Than $145,000** 401(k) plan participants who have attained age 50 are permitted to make additional, "catch up" contributions. Under existing law, participants can elect to make catch-up contributions on a pre-tax or after-tax Roth basis (if permitted by the plan). SECURE 2.0 will require that any catch-up contributions by employees whose wages for the preceding year from the plan sponsor exceed $145,000 (indexed for inflation) be made on a Roth basis.	Taxable years beginning after December 31, 2023	Required	In some, limited circumstances, whether or not elective deferrals constitute a catch-up contribution may not be known until after the end of the plan-year when plan testing is performed. It is not clear how this new rule will apply in such situations.
604	**Participants Can Elect Roth Treatment for Employer Contributions** Under existing law, employer contributions to a defined contribution plan can only be made on a pre-tax basis. SECURE 2.0 permits a defined contribution plan to provide participants with the option of receiving matching contributions or employer non-elective contributions on an after-tax Roth basis. Any such Roth contributions would be immediately taxable to the participant and must be immediately fully vested.	Contributions made after December 29, 2022	Optional	Although this dramatic change is immediately effective, employers will likely find themselves waiting on implementation while payroll and recordkeeping systems are updated to accommodate the resulting logistical and administrative complexities. Adding a Roth option for employer contributions to a plan that otherwise provides for normal pre-tax employer contributions subject to a vesting schedule could result in significant additional costs to the plan sponsor because of the full-vesting requirement of the Roth option.