

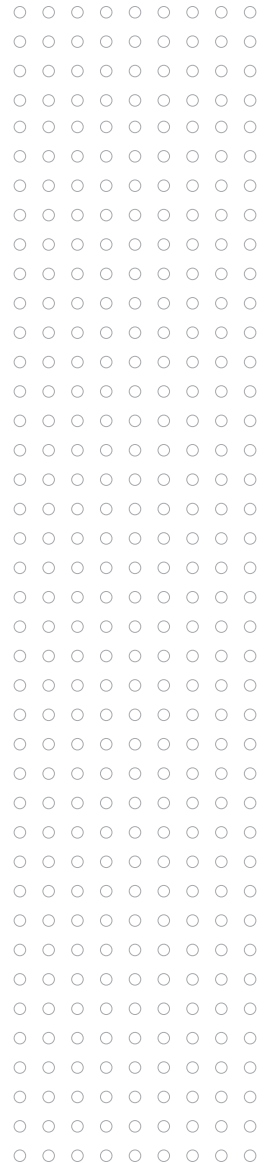
# SECURE Act 2.0: Your Year-by-Year Reference Guide

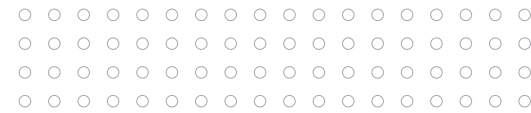
## 403(b) Plans

This guide lists many of the important provisions in SECURE Act 2.0 that apply to 403(b) plans. While the Act has additional provisions that could affect the design or operation of 403(b) plans, the focus of this list is to provide plan sponsors with a usable chart of the provisions that will likely be most impactful on their plans. The chart is organized so that the provisions effective in 2022 and 2023 are first, with the remaining provisions listed by the years in which they become effective.

This chart also indicates whether a 403(b) provision in SECURE Act 2.0 is applicable to government plans, as well as private sector plans. Unfortunately, Congress was not as clear as could be about the applicability of some of the provisions to government plans. As a result, that part of the chart is based on a reasonable, good-faith interpretation of the statutory provisions.

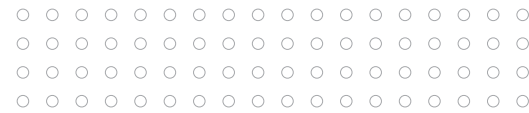
A unique feature of the SECURE Act 2.0 is that many of its provisions are optional. In other words, plan sponsors can adopt these new provisions if desired (for example, if they would benefit the workforce covered by the plan) but could decide to not adopt them if not desired. Of course, the Act also includes mandatory provisions that will need to be satisfied on a timely basis in order to avoid loss of the tax benefits provided by the plan. The chart indicates which provisions are mandatory and which are optional.





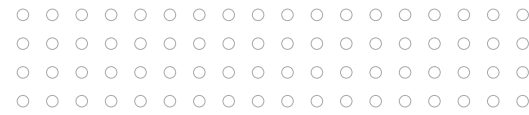
## Provisions Effective in 2023

Provision	What It Means	Applicable to Government Plans?	Effective Date	Optional or Mandatory	Key Points
Optional treatment of employer matching or nonelective contributions as Roth contributions.	The Act includes a provision that permits plan sponsors, at their option, to allow participants to treat employer matching or nonelective contributions as Roth contributions. In that case, and if a participant elects, the employer contributions would be taxed to the participant, but would be received tax free when distributed.	Yes. This provision applies to both private sector and public sector 403(b) plans.	Available for contributions made after 12/29/2022.	Optional	In order to use this new provision, the matching and/or nonelective contributions must be fully vested.
Small immediate financial incentives for contributing to a plan.	The Act enables employers to offer de minimis financial incentives (like gift cards in small amounts) to boost employee participation in, and deferrals to, 403(b) plans.	Yes.	Plan years beginning after 12/29/2022.	Optional	The cost of the gift cards cannot be paid from plan assets.  This change will allow plan sponsors to use gamification to encourage participation in, and increase deferrals to, 403(b) plans.
Plan sponsors may rely on employee certifying that deemed hardship distributions are met.	The Act provides that employees are permitted to self-certify that they have had an event that constitutes a hardship for purposes of taking a hardship withdrawal. Specifically, the employee can self-certify that the distribution is needed due to an immediate and heavy financial need and does not exceed the amount required to satisfy that need.	Yes.	Plan years beginning after 12/29/2022.	Optional	This change will ease the administration of hardship withdrawals.



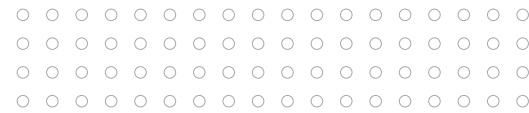
**Provisions Effective in 2023 (continued)**

<b>Provision</b>	<b>What It Means</b>	<b>Applicable to Government Plans?</b>	<b>Effective Date</b>	<b>Optional or Mandatory</b>	<b>Key Points</b>
Recovery of retirement plan overpayments.	The Act allows retirement plan fiduciaries the latitude to decide not to recoup overpayments that were mistakenly made to retirees. If plan fiduciaries choose to recoup overpayments, limitations and protections apply to safeguard innocent retirees.	This provision includes amendments to ERISA. The restrictions in the ERISA amendments do not apply to governmental plans. However, the relief provided by the Code amendments is available to governmental 403(b) plans.	Effective on enactment: 12/29/2022.	Optional	In the past, plan fiduciaries were expected to pursue collecting overpayments from participants, even for very small amounts. This change allows a more reasonable approach and has protections for participants who were overpaid.
Reduction in excise tax on failure to take required minimum distributions.	The Act reduces the penalty for failure to take RMDs from 50% to 25%. The excise tax is further reduced from 25% to 10% if the failure is timely identified and corrected.	Yes.	Taxable years beginning after 12/29/2022.	Mandatory	
Exception from penalty on early distributions for terminal illness.	The Act provides an exception to the 10% penalty on early distributions for participants with terminal illnesses.	Yes.	Distributions made after 12/29/2022.	Mandatory	While the waiver of the tax is mandated by the Act, it is optional for plan sponsors to decide whether to include a terminal illness withdrawal right in their plans.  Participants will need to provide “sufficient evidence” of a terminal illness. The IRS will issue guidance on the needed documentation.



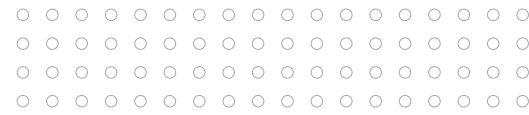
**Provisions Effective in 2023 (continued)**

Provision	What It Means	Applicable to Government Plans?	Effective Date	Optional or Mandatory	Key Points
<p>Qualifying longevity annuity contracts.</p>	<p>The Act amends the rules for Required Minimum Distributions (RMDs) by repealing the current 25 percent limit (of a participant’s account balance to purchase the annuity) and allows up to \$200,000 (indexed) to be used from an account balance to purchase a qualifying longevity annuity contract (QLAC).  The Act also facilitates the purchase of QLACs with spousal survival rights and clarifies that free-look periods are permitted up to 90 days.</p>	<p>Yes.</p>	<p>Effective for QLACs purchased on or after 12/29/2022.</p>	<p>Optional</p>	<p>QLACS are deferred annuities that start making payments at a later date, e.g., age 85. In effect, they provide protection against running out of money due to longevity.</p>
<p>Automatic enrollment and automatic deferral increases for new 403(b) plans.</p>	<p>403(b) plans established on or after the Act’s enactment date—December 29, 2022—must provide for automatic enrollment and automatic deferral increases. The initial deferral rate must be at least 3% of pay and the increases must be up to at least 10%. Plan sponsors can, if desired, allow the automatic increases to go up to 15%.  Employees can opt out of participation and can change their deferral rates.</p>	<p>No.</p>	<p>The requirement applies to 403(b) plans adopted on or after 12/29/2022. However, those plans are not required to adopt the automatic provisions until their plan years beginning after 12/31/2024.</p>	<p>Mandatory</p>	<p>Any participants who do not direct the investment of their accounts must be invested in a QDIA, a qualified default investment alternative (generally, a target date fund, a balanced fund or a managed account).  There are exceptions. For example, employers with 10 or fewer employees and employers in existence for 3 years or less are excepted from this requirement.  In addition, government and church plans are excepted.</p>



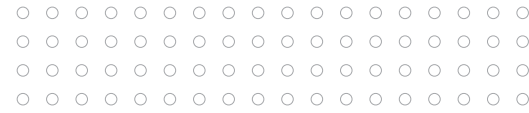
**Provisions Effective in 2023 (continued)**

Provision	What It Means	Applicable to Government Plans?	Effective Date	Optional or Mandatory	Key Points
<p>Increase in age for required beginning date for mandatory distributions.</p>	<p>SECURE Act 1.0 increased the beginning age for required minimum distributions (RMDs) from 70½ to 72.</p> <p>SECURE Act 2.0 further increases the RMD age to 73 for those who turn age 72 after 12/31/2022. The RMD age is further increased to age 75 for those who become 74 after 12/31/2032.</p>	<p>Yes.</p>	<p>Distributions made after 12/31/22, for individuals who attain age 72 after that date.</p>	<p>Mandatory</p>	<p>While the changes increase the RMD ages, a plan can continue to use the prior RMD ages to “force” distributions at those earlier age. However, those earlier distributions would not be considered RMDs, e.g., they could be rolled over.</p>
<p>Eliminates unnecessary plan notices for unenrolled eligible employees.</p>	<p>The Act eliminates the requirement that employers provide many ERISA and/or Code notices to unenrolled participants who have not elected to participate in a plan. However, to further encourage participation of unenrolled participants, the plan is required to send (i) an annual reminder notice of the participant’s eligibility to participate in the plan and any applicable election deadlines, and (ii) any otherwise required document requested at any time by the participant.</p> <p>An “unenrolled participant” is an employee who is eligible to participate in a plan but who is not contributing to the plan and does not otherwise have a funded account in the plan.</p>	<p>Generally, no. Government plans are not subject to ERISA.</p> <p>However, government plans do need to require with certain notice provisions in the Internal Revenue Code, and this will provide some relief for those requirements.</p>	<p>Plan years beginning after 12/31/2022.</p>	<p>Mandatory</p>	<p>This rule applies only with respect to an unenrolled participant who received the summary plan description, in connection with initial eligibility under the plan, and any other notices related to eligibility under the plan that are required to be furnished.</p>



**Provisions Effective in 2023 (continued)**

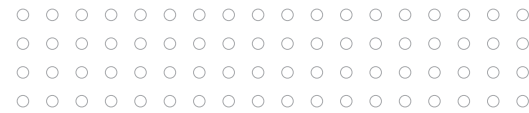
<b>Provision</b>	<b>What It Means</b>	<b>Applicable to Government Plans?</b>	<b>Effective Date</b>	<b>Optional or Mandatory</b>	<b>Key Points</b>
Multiple employer (MEP) and pooled employer (PEP) 403(b) plans.	<p>The Act allows 403(b) plans, which are generally sponsored by charities, educational institutions, and non-profits, to participate in multiple employer plans (MEPs) and pooled employer plans (PEPs).</p> <p>The Act also includes relief from the “one bad apple” rule so that the violations of one adopting employer do not affect the tax treatment for employees of compliant employers.</p>	<p>Yes.</p> <p>Further, certain of the requirements for governments to establish these arrangements are reduced from those imposed on private sector arrangements.</p>	Plan years beginning after 12/31/2022.	Optional	MEPs and PEPs provide an opportunity for small employers to band together to obtain more favorable retirement plan investments and more efficient plan services.
403(b) plans and collective investment trusts (CITs)	<p>Under current law, 403(b) plan investments are generally limited to annuity contracts and publicly traded mutual funds. This limits 403(b) plans from access to collective investment trusts, which are often used by 401(a) plans to obtain lower costs.</p> <p>The Act amends the Internal Revenue Code to permit 403(b) custodial accounts to use collective investment trusts</p> <p>The Act amends the Internal Revenue Code to permit 403(b) custodial accounts to use collective investment trusts.</p>	Yes.	Amounts invested after 12/29/2022.		Unfortunately, the Act did not amend a provision in the securities laws that would allow CITs to be included in 403(b) plans. As a result, technical corrections or an administrative exemption will be needed before this change can be implemented.



## Provisions Effective in 2024

Provision	What It Means	Applicable to Government Plans?	Effective Date	Optional or Mandatory	Key Points
Treatment of student loan payments as elective deferrals for purposes of matching contributions.	<p>The Act permits an employer to make matching contributions under a 403(b) plan for “qualified student loan payments” (QSLPs).</p> <p>A QSLP is broadly defined as any indebtedness incurred by an employee solely to pay qualified higher education expenses of the employee.</p>	Yes.	Plan years beginning after 12/31/2023.	Optional	<p>Plans can rely on employee certification of having made qualified student loan payments.</p> <p>The matching contributions for QSLPs must be treated the same as matching contributions for elective deferrals, except that they can be made annually.</p>
Safe harbor 403(b) plans for employers with no retirement plan.	<p>The Act permits an employer that does not sponsor a retirement plan to offer a safe harbor 403(b) plan.</p> <p>A safe harbor 403(b) plan requires that all eligible employees be automatically enrolled at a deferral rate of no less than 3% and no more than 15% of compensation deferral rate.</p> <p>The limit on annual deferrals would be the same as the IRA contribution limit, which for 2023 is \$6,500 with an additional \$1,000 in catch-up contributions beginning at age 50.</p>	Yes.	Plan years beginning after 12/31/2023.	Optional	<p>While not explicit in the Act, it appears that 403(b) plans established on or after 12/29/2022 would be required to automatically increase the deferral rates in a manner consistent with the automatic plan provision (described earlier in this chart). However, the automatic deferral increases would not be required until the plan year that begins after 12/31/2024.</p>

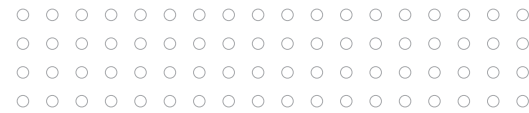




**Provisions Effective in 2024 (continued)**

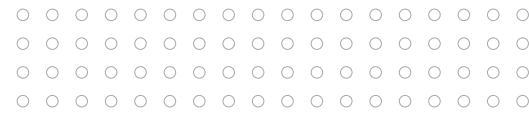
Provision	What It Means	Applicable to Government Plans?	Effective Date	Optional or Mandatory	Key Points
<p>Emergency savings accounts linked to individual account plans.</p>	<p>The Act provides employers the option to offer to their non-highly compensated employees emergency savings accounts linked to their retirement plans.</p> <p>Employees can self-enroll in these accounts or employers may automatically enroll employees into these accounts at no more than 3% of their pay.</p> <p>The portion of an account attributable to the employee’s contribution is capped at \$2,500 (or lower as set by the employer), but the earnings can exceed that amount. Once the cap is reached, the additional contributions can be directed to the employee’s Roth account in the plan (if they have one) or stopped until the balance attributable to contributions falls below the cap.</p> <p>Contributions are made on a Roth-like basis and are treated as elective deferrals for purposes of retirement matching contributions. However, the matching contributions are allocated to the plan matching account and not to the savings account.</p> <p>The first four withdrawals from the savings account each plan year cannot be subject to any charges solely on the basis of such withdrawals.</p> <p>At separation from service, employees may take their emergency savings accounts as cash or roll it into their Roth defined contribution plan (if they have one) or be distributed to the participant.</p> <p>The savings accounts must be invested in secure interest-bearing accounts.</p>	<p>No.</p>	<p>Plan years beginning after 12/31/2023.</p>	<p>Optional</p>	<p>These new emergency accounts (also called “sidecar savings accounts”) will need to be supported by the plan’s recordkeeper. Plan sponsors should coordinate with their advisors and recordkeepers.</p> <p>In addition, plan sponsors will need to educate their participants about this new provision—if adopted for the plan.</p>





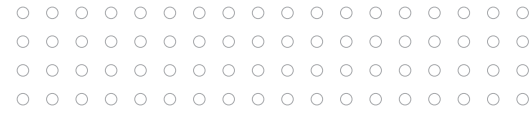
**Provisions Effective in 2024 (continued)**

Provision	What It Means	Applicable to Government Plans?	Effective Date	Optional or Mandatory	Key Points
Catch-up contributions for higher compensated participants must be on Roth basis.	The Act provides that all catch-up contributions to qualified retirement plans participants who make over \$145,000 (indexed) must be treated as Roth deferrals.	Yes.	Tax years beginning after 12/31/2023.	Mandatory	Unfortunately, the Act includes a drafting error, where the internal Revenue Code provision authorizing catch-up contributions was inadvertently repealed for years after 12/31/2023. It is anticipated that Congress will correct that error before 2024.
Withdrawals for emergency expenses.	<p>The Act provides an exception to the 10% early distribution tax for certain distributions used for emergency expenses, which are unforeseeable or immediate financial needs relating to personal or family emergency expenses.</p> <p>Only one distribution is permissible per year of up to \$1,000, and a taxpayer has the option to repay the distribution within 3 years.</p> <p>No further emergency distributions are permissible during the 3-year repayment period unless repayment occurs.</p>	Yes.	Distributions made after 12/31/2023.	Optional	
Increased dollar limits for “force-out” distributions.	Under current law, plans may transfer former employees’ retirement accounts from a retirement plan to an IRA if their balances are between \$5,000 of less. The Act increases the limit from \$5,000 to \$7,000.	Yes.	Distributions made after 12/31/2023.	Optional	



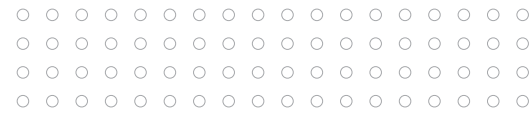
**Provisions Effective in 2024 (continued)**

Provision	What It Means	Applicable to Government Plans?	Effective Date	Optional or Mandatory	Key Points
<p>RMD rules for Roth accounts.</p>	<p>The Act eliminates the pre-death distribution requirement for Roth accounts in retirement plans. That is, Roth accounts will not, after the effective dates, be required to make RMDs.</p> <p>This change aligns the requirements for retirement plans with those for IRAs.</p>	<p>Yes.</p>	<p>Taxable years after 12/31/23.</p>	<p>Mandatory</p>	<p>This new provision does not apply to distributions which are required for years beginning before January 1, 2024 but are permitted to be paid in 2024.</p>
<p>Hardship withdrawal rules for 403(b) plans.</p>	<p>Under current law, the distribution rules for 401(k) and 403(b) are different in certain ways that are historical anomalies for varied reasons.</p> <p>For example, for 401(k) plans, all amounts are available for a hardship distribution. For 403(b) plans, in some cases, only employee contributions (without earnings) have been available for hardship distributions.</p> <p>The Act conforms the 403(b) rules to the 401(k) rules, so that all amounts in a participant’s 403(b) account will be available for hardship withdrawals.</p>	<p>Yes.</p>	<p>Plan years beginning after 12/31/2023.</p>	<p>Optional</p>	



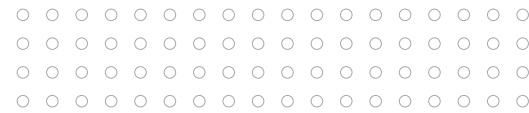
**Provisions Effective in 2024 (continued)**

Provision	What It Means	Applicable to Government Plans?	Effective Date	Optional or Mandatory	Key Points
<p>Penalty-free withdrawals from retirement plans for domestic abuse.</p>	<p>The Act allows retirement plans to permit participants that self-certify that they experienced domestic abuse to withdraw a small amount of money (the lesser of \$10,000, indexed for inflation, or 50 percent of the participant’s account).</p> <p>A distribution made under this new provision is not subject to the 10% tax on early distributions.</p> <p>Additionally, a participant has the opportunity to repay the withdrawn money from the retirement plan over 3 years and will be refunded for income taxes on money that is repaid.</p>	<p>Yes.</p>	<p>Distributions made after 12/31/2023.</p>	<p>Optional</p>	



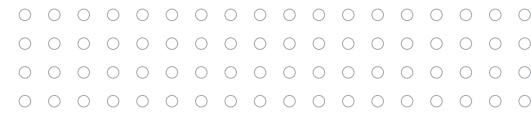
## Provisions Effective in 2025

Provision	What It Means	Applicable to Government Plans?	Effective Date	Optional or Mandatory	Key Points
Higher catch-up contribution limits.	<p>The Act increases the limits for catch-up contributions to the greater of \$10,000 or 50% more than the regular catch-up amount for individuals who have attained ages 60, 61, 62 and 63.</p> <p>The increased amounts are indexed for inflation after 2025.</p>	Yes.	Taxable years beginning after 12/31/2024.	Optional	
Improving coverage for long-term, part-time workers.	<p>The Act requires plan sponsors to allow long-term, part-time workers to participate in their 403(b) plans. Long-term, part-time is defined as the completion of 2 consecutive years of service where the employee completes at least 500 hours of service each year (but does not work enough hours to be otherwise eligible to participate).</p> <p>Service before January 1, 2023 is not taken into account for counting the employee's eligibility to participate.</p>	No.	Plan years beginning after 12/31/2024.	Mandatory	<p>Long-term, part-time employees must be allowed to defer into the plan, but plan sponsors are not required to make matching or nonelective contributions for them.</p> <p>However, if desired, plan sponsors can make contributions for those employees.</p>
Retirement savings lost and found.	<p>The Act creates a national online searchable lost-and-found database for Americans' retirement plans. The database will enable retirement savers, who might have lost track of their retirement plan, to search for the contact information of their plan administrator.</p>	No. This is an amendment to ERISA. As such, it does not apply to government plans.	DOL to create online lost and found by 12/29/2024.	Mandatory	<p>Government and church plans are excepted from this provision.</p> <p>The Department of Labor will need to update the reporting requirements to obtain the information needed for this website.</p>



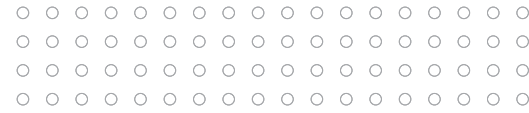
Provisions Effective in 2025 (continued)

Provision	What It Means	Applicable to Government Plans?	Effective Date	Optional or Mandatory	Key Points
Long-term care contracts purchased with retirement plan distributions.	<p>The Act permits retirement plans to distribute up to \$2,500 per year for the payment of premiums for certain specified long term care insurance contracts.</p> <p>Distributions from plans to pay such premiums are exempt from the additional 10% tax on early distributions. Only a policy that provides for high quality coverage is eligible for early distribution and waiver of the 10% tax.</p>	Yes.	12/29/2025.	Optional	
Plan amendments.	<p>The Act allows plan amendments made pursuant to this Act the first plan year beginning on or after January 1, 2025 as long as the plan operates in accordance with such amendments as of the effective date of (i) a required provision or (ii) the adoption of an optional provision.</p> <p>The Act also conforms the plan amendment dates under the SECURE Act, the CARES Act, and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 to these new dates (instead of 2022 and 2025).</p>	Yes, but for governmental plans, the amendment dates are delayed until plan years beginning after 1/1/2027.	Plan years beginning on or after 1/1/2025.	Mandatory	<p>The amendment date for government and collectively bargained plans is delayed until plan years beginning on or after January 1, 2027.</p> <p>While plan amendments may be delayed,, plans must be operated consistent with the mandatory provisions as of the effective dates of those provisions.</p> <p>With regard to optional provisions, once a plan sponsor decides to use an optional provision, the plan must be operated in a manner consistent with the requirements for that optional provision.</p>



## Provisions Effective Beyond 2025

Provision	What It Means	Applicable to Government Plans?	Effective Date	Optional or Mandatory	Key Points
Saver's Match	<p>The SECURE Act 2.0 establishes a new refundable credit for individuals who make IRA and retirement plan contributions. This new type of credit is a federal matching contribution that is deposited into the IRA or the participant's account in the retirement plan (e.g., 403(b) account).</p> <p>The match is 50% of the IRA or retirement plan contributions up to \$2,000 per individual.</p> <p>The match phases out between \$41,000 and \$71,000 for taxpayers filing a joint return (\$20,500 to \$35,500 for single taxpayers and married filing separate; \$30,750 to \$53,250 for head of household filers).</p>	Yes.	Tax years beginning after 12/31/2026.	Mandatory	This provision is mandatory in the sense that, if a qualifying participant claims the credit, the plan must allow the credit to be deposited into the participant's account.
Requirement to provide paper statements.	The Act amends ERISA to generally provide that, with respect to defined contribution plans, unless a participant elects otherwise, the plan is required to provide a paper benefit statement at least once annually. The other three quarterly statements required under ERISA are not subject to this rule (i.e., they can be provided electronically).	No. This only amends ERISA, not the Code.	Plan years beginning after 12/31/2025.	Mandatory	This provision only applies to 403(b) plans that are subject to ERISA, the Employee Retirement Income Security Act.



These materials, including the summaries and effective dates, are for general educational purposes only. The summaries are brief to make this easy to use, but the brevity necessarily leaves out parts of the rules. In addition, these materials are based on information available as of March 1, 2023 and do not reflect any laws, regulations or other guidance after that date. Before making any decisions about plan design or operation, plan sponsors should consult with their legal counsel and advisors.

This content was authored by Fred Reish. Fred Reish is a partner with the law firm of Faegre Drinker who specializes in retirement law, focusing on fiduciary and best interest standards of care, prohibited transactions, conflicts of interest, and retirement plans.

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