POLLARD
& Associates, Inc.
Consultants, Actuaries and Administrators of Pension
and Profit Sharing Plans Since 1970

One North Park Drive, Suite 104
Hunt Valley, MD 21030-1816
410.771.3035
fax 410.771.3036
pollardpensions.com

New Distribution Rules & Options Under SECURE 2.0
Summary as of April 27, 2023

SECURE 2.0 was enacted by Congress and signed into law on December 29, 2022. It affects virtually all types of retirement plans, and contains over 90 provisions, making this the largest retirement reform legislation in nearly a half a century.

Effective dates of the Act's provision are wide ranging – from 2022 to 2028. Implementing SECIRE 2.0 will take time for everyone, including the IRS and Department of Labor to issue guidance that is necessary in order to integrate many of the technical changes over the next several years. The amendment deadline to incorporate these changes into the legal plan document is the last day of the plan year beginning on or after 1/1/2025 (December 31, 2025 for a calendar-year plans). Pollard will work with our document vendor to timely amend plans prior to the deadline.

SECURE 2.0 largely starts where SECURE 1.0 left off. As a result, many changes made by 2.0 generally fall into the same broad topics as changes made by SECURE 1.0, and those topics include simplification and clarification of existing retirement plan rules, expanding coverage to part-time workers, increasing retirement savings, and preserving retirement income.

This is our first Memo in a series that will focus on rules & provisions as they become effective. The legislation is a mixed bag, including some welcome changes, but also some changes that will further complicate an already broad set of detailed and technical rules.

This Memo is intended to address only the new distribution rules & options that will impact most of our plan sponsors.

Required Minimum Distribution (RMD) Changes – Effective Immediately

One of the most immediate administrative impacts is the change to the age after which RMDs must commence for terminated participants and/or owner employees. SECURE 2.0 changes the age to 73, from 72, effective this year. The chart below represents the applicable RMD age based on an employee's date of birth.

Birth Date	**Applicable RMD Age**
Before July 1, 1949	70 ½
July 1, 1949 – 1950	72
1951 – 1959	73
1960 or later	75

SECURE 2.0 also provides for a reduction in the excise tax for failure to take an RMD to 25% (from 50%) or 10% if corrected before the second year after the year in which the excise tax is imposed, provided the taxpayer is not under IRS examination and the return & excise tax is paid within that timeframe.

Finally, effective January 1, 2024, Roth 401(k) balances will be *excluded* in calculating the RMD amount, consistent with the rules that exempt Roth IRA accounts from RMDs.

Employee Hardship Self-Certification (Optional, but Recommended)

Pre-SECURE 2.0, plan sponsors had the ability to allow for limited self-certification by a participant for a financial hardship need. SECURE 2.0 *provides for full self-certification* provided that the:

1. Hardship request is on account of one of the seven permitted IRS safe harbor reasons;
2. Hardship request is not in excess of the amount required to satisfy the financial need; and
3. Employee does not have other reasonably available resources to satisfy the hardship.

This new rule applies to 401(k) and 403(b) plans, and extends the same relief for 457(b) plans with respect to unforeseeable emergency withdrawals. We expect the IRS to issue regulations addressing that the Employer can rely on a participant's self-certification unless they have actual knowledge to the contrary, as well as guidance on how to addresses cases of misrepresentation.

We have prepared and attached hereto our Hardship Self-Certification form, which will be available for your participants based on these new rules. **Effective immediately, Pollard's default will be to require all participants to complete and return a Hardship Self-Certification form prior to processing any hardship distribution in lieu of requiring backup documentation for the hardship reason (e.g. copies of medical bills, eviction notice, etc.)**. **If you choose to NOT utilize the Hardship Self-Certification form, and want to continue to require backup documentation, please advise your Pollard administrator as soon as possible so we can notate your plan records accordingly.**

Additionally, 403(b) Plan hardship rules will be permitted, beginning in 2024, to allow hardship distributions from Employer contributions and eliminate the requirement to take an available loan prior to qualifying for a hardship withdrawal (same rules as currently permitted under 401(k) plans.)

New Distribution Rules (Optional)

Plans may operate in accordance with the new distribution options outlined below, even though IRS approved language to adopt these provisions via plan amendment is not expected until at least 2024. **Pollard's default will be to permit all of the distribution options below. If you do NOT wish to allow one or more of these distribution options, please advise your Pollard administrator as soon as possible so we can notate your plan records accordingly.**

Disaster Relief – Effective Immediately: Special distribution rules are now available for disaster relief. Previously this type of relief has been declared by the IRS on a case-by-case basis. SECURE 2.0 provides permanent relief for qualified disaster distributions, as specified by FEMA, up to 180 days after the declaration of a disaster, with an extension to June 27, 2023 for any disaster that occurred prior to enactment of the law.

Distribution provisions include:

- Withdrawal of up to $22,000 exempt from the mandatory withholding requirement

- No 10% penalty tax if under age 59 ½
- Income tax may be spread over 3 years
- May be repaid to plan or IRA within 3 years of receipt to avoid taxation
- Participant loan limits are increased to the lesser of $100,000 or 100% of the participant's vested account balance with suspension of payments and up to a 1-year delay of the otherwise 5-year repayment limit.

Qualified Birth & Adoption Distribution Rules (QBAD) – Effective Immediately: This provision was originated in SECURE 1.0 and modified under 2.0. It allows a participant to withdraw up to $5,000 for expenses relating to the birth or adoption of a child.

Distribution provisions include:
- Exempt from 10% penalty tax if participant is under age 59 ½
- Tax may be spread over 3 years
- May be repaid to the plan or IRA within 3 years of receipt (was unlimited under SECURE 1.0). The 3-year repayment requirement applies to distributions made after December 29, 2022; the repayment deadline for distributions prior to this date is December 29, 2025.

Terminal Illness Distributions – Effective Immediately: Provides for a distribution that is exempt from the 10% penalty if the participant is under age 59 ½ and is a terminally ill individual who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 84 months or less. The physician's certification must be provided to the Plan Administrator. For participants under age 59 ½, withdrawal is limited to fully vested Match & Profit Sharing accounts only; 401(k) and Safe Harbor accounts are not permitted for withdrawal under age 59 ½ .

Emergency Personal Expense Withdrawals – Effective 1/1/2024: Plans may offer in-service withdrawals for emergency personal expenses, self-certified by the participant. Emergency personal expenses under this provision are not limited to the seven specific IRS hardship withdrawal reasons. A self-certification form will be provided to plan sponsors once the language for emergency personal expenses is available.

Distribution provisions include:
- Amount of the withdrawal is limited to the lesser of $1,000 or 100% of the Participant's vested account balance
- Exempt from mandatory withholding & 10% penalty tax if participant is under age 59 ½
- Income tax may be spread over 3 years
- May be repaid to the plan or IRA within 3 years of receipt
- Only one allowed in any 3-calendar year period unless the earlier withdrawal has been re-paid

Domestic Abuse Withdrawals – Effective 1/1/2024: Plans may offer in-service withdrawals for participants who are the victim of domestic abuse, self-certified by the participant.

Distribution provisions include:
- Amount is limited to the lesser of $10,000 or 50% of the Participant's vested account balance

- Must be requested within one year of incident
- Exempt from mandatory withholding & 10% penalty tax if participant is under age 59 ½
- Income tax may be spread over 3 years
- May be repaid to the plan or IRA within 3 years of receipt

This Memo does not include information on pension-linked Emergency Savings Accounts. This complicated provision is not effective until January 1, 2024 and the timeframe for implementation on various recordkeeping platforms has not been announced.

If you have questions on any of the new withdrawal provisions available under SECURE 2.0, please don't hesitate to reach out to your Pollard Administrator. Our next communication will cover new Roth provisions for Employer contributions and catch-up contributions, and the student loan matching program.