Securing a Strong Retirement Act of 2022 – aka SECURE ACT 2.0

The U.S. House of Representatives passed the Securing a Strong Retirement Act of 2022 (the "Act") on March 30, 2022. This Act is more commonly referred to as SECURE Act 2.0 and is seen as building upon or enhancing the Setting Every Community Up for Retirement Enhancement Act of 2019 (the SECURE Act). The Act can be broken down into the following summarized component parts:

Expanding Coverage and Increasing Retirement Savings

- *Expanding Automatic Enrollment in Retirement Plans* – Requires 401(k) and 403(b) plans to include EACA at 3% (not more than 10%) auto deferral with minimum 1% auto increase to 10% (not to exceed 15%). Amounts to defaulted into QDIA. Does not apply to SIMPLE, plans adopted before effective date of the Act, governmental or church plans, plans in existence for less than 3 years, or plans maintained by employers with 10 or fewer employees.

- *Small Employer Pension Plan Startup Credit* – Increases credit for small employers from 50% of startup costs to 100% and provides additional credit for employer contributions. There are dollar limitations and a phase-in of the credit. These credits would be available to eligible employers if they adopt an existing plan.

- *Savers Credit Enhancement* – The credit available has been enhanced and is subject to inflation adjustments on an annual basis making them more attractive.

- *403(b) Plans are Allowed to Use Collective Investment Trusts (CITs)* – CITs are pooled investment vehicles designed exclusively for use with qualified plans. These vehicles are alternatives to mutual funds or separate accounts and allow for greater flexibility in investment design and often times fee savings. They have been utilized by 401(k), 457, and other qualified plans for decades and will be made available for use by 403(b) plans should the Act become a statute.

- *Increase in Required Minimum Distribution (RMD) Age* – Moves back the date by which retired participants are required to begin taking minimum distributions from their qualified plans. Individuals who attain age 72 after 12/31/22 and age 73 prior to 1/1/30 the RMD is age 73. For those who attain age 73 after 12/31/29 and age 74 prior to 1/1/33 the RMD is age 74. For those who attain age 74 after 12/31/32 the RMD is age 75.

- *IRA Catch Up Limit Indexed* – Subject to a COLA adjustment.

- *Increasing Catch Up Limits Within Plans* – The COLA adjusted $5,000 catch up limit will be raised to COLA adjusted $10,000 for participants who attain age 62, but not age 65, before the close of the taxable year.

- *Multiple Employer Plans for 403(b)s* – 403(b) plans (other than church plans) may combine to create multiple employer plans (MEPs). Failure by one adopting employer doesn't spoil the entire plan (no "bad apple rule").

- *Matching Contributions for Student Loan Repayments* – Employers can make matching contributions into their qualified retirement plans for employee repayments made on qualified student loans for higher education. Must be at same rate as matching contributions on elective deferrals and vesting must also be consistent. Subject to 402(g) limits and reduced by elective deferrals made into the plan by employees. For nondiscrimination testing purposes the loan repayment may be treated as an elective deferral/contribution. This applies to 401(k), 403(b), 457, and SIMPLE plans.

- *Military Spouse Retirement Plan Eligibility Credit for Small Employers* - $250 credit for contributions made for each military spouse employed by small employer.

- *Small Financial Incentives for Contributions* – Plan sponsors may provide small incentives (like gift cards) to employees to spur employee deferrals.

- *Safe Harbor for Employee Elective Deferral Failures* – If error (auto enroll or escalation) is corrected within 9½ months after end of year in which error occurred, favorably to participant, and consistently among similarly situated participant.

- *Long-Term Part-Time Eligibility Accelerated* – Changes eligibility from 3 consecutive years of 500 hours worked to two consecutive years.

- *ESOP Changes* – Deferral of tax for certain sales of employer stock to ESOP of S-Corp. Certain securities treated as publicly traded for ESOP.

Preservation of Income

- *Qualifying Longevity Annuity Contracts (QLACs) Made More Attractive* – QLACs are designed to begin payment towards the end of individuals' life expectancy. This helps to safeguard against running out of income later in life. The 25% limit would be removed, and spouses would be allowed to share QLACs as joint and survivor annuities.

- *ETFs* – Makes access to exchange traded funds broader.

Simplification and Clarification of Retirement Plan Rules

- *Recovery of Retirement Plan Overpayments* – Statutorily relieves fiduciaries from seeking inadvertent benefit overpayments, but if they do so the Act puts rules in place (no interest or additional amounts can be sought, if repaid in installments the aggregate cannot exceed the amount of the overpayment, consideration of hardship imposed on recipient, etc.). Clarifies that failure to obtain repayment does not impact qualified status of plan.

- *Reduction in Excise Taxes* – Excises taxes imposed for failure to RMDs have been reduced from 50% to 25% and can be further reduced to 10% if corrected during a provided correction window.

- *Performance Benchmark for Asset Allocation Funds* – for designated investment alternatives ("DIA") held by a plan, the fiduciaries may use a benchmark that is a blend of different broad based securities market indices if it's reasonably representative of asset class holdings of the DIA; the blend is modified at least once per year to reflect changes in holdings of DIA, it's given to participants in easy to understand fashion, and each index used would meet requirements standing alone.

- *Elimination of Notices and Disclosures* – Certain disclosures, notices and plan documents would not have to be provided to unenrolled employees if they are given an annual reminder of their eligibility with election deadlines and any document, they request to which they are entitled to receive otherwise. They must be given a summary plan description.

- *Online Retirement Savings Lost and Found* – Department of Labor to create where individuals can search for administrators of any plan.

- *Increasing Cashout Limit* - Changing the small amount cashout threshold from $5,000 to $7,000.
- *Expanding the EPCRS* – Corrections for loan errors, IRAs, and additional safe harbors.
- *Elimination of the "first day of the month" Requirement for Governmental 457 Plans*
- *Provisions Relating Firefighters and First Responders*
- *Hardship Certifications* – Administrators may rely on employee certifications of hardship requirements.
- *Domestic Abuse Distributions* – Allow penalty-free distributions from plans for domestic abuse victims equal to lesser of $10,000 or 50% of account balance. Distributions may be repaid.

Revenue Provisions

- *Treatment of Matching Contributions as Roth* – Allows for optional treatment of matching contributions on deferrals or student loan repayments to be treated as Roth contributions (including taxability).

For more information, please contact:
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