President Biden signed the SECURE 2.0 Act of 2022 ("SECURE 2.0") as part of the Consolidated Appropriations Act of 2023 on December 29, 2022. SECURE 2.0 includes significant changes for the administration of employee benefit plans.

EXPANDING ACCESS TO RETIREMENT PLANS

Expanding automatic enrollment in retirement plans

SECURE 2.0 requires newly established 401(k) and 403(b) plans to automatically enroll participants in those plans upon becoming eligible. The initial automatic enrollment amount must be at least 3% of compensation but not more than 10% of compensation. Automatic enrollment elections will be subject to an annual automatic escalation of 1% of compensation per year until the contributions reach at least 10% of compensation, but not more than 15% of compensation. Current 401(k) and 403(b) plans are not subject to the automatic enrollment requirement. Small businesses with 10 or fewer employees, new businesses (*i.e.*, those that have been in business for less than three years), church plans, and governmental plans are not subject to the automatic enrollment requirement. **This provision is effective for plan years beginning after December 31, 2024.**

Starter 401(k) plans for employers with no retirement plan

Employers that do not sponsor retirement plans may establish a starter 401(k) plan (or safe harbor 403(b) plan). Such plans would provide for automatic enrollment at a deferral rate between 3% and 15% of compensation. The annual deferral limit for starter 401(k) plans is the same as the individual retirement account ("IRA") contribution limit, which for 2023 is $6,500 with an additional $1,000 in catch-up contributions beginning at age 50. **This provision is effective for plan years beginning after December 31, 2023.**

Saver's match

SECURE 2.0 converts the current credit available to certain individuals with lower to middle income who make contributions to IRAs and employer retirement plans (such as 401(k) plans) to a federal matching contribution that must be deposited into a taxpayer's IRA or retirement plan. The federal matching contribution will equal 50% of [current year] IRA or retirement plan contributions up to $2,000 per individual. The match phases out with earnings between $41,000 and $71,000 in the case of 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). **This provision is effective for taxable years beginning after December 31, 2026.**

Treatment of student loan payments as elective deferrals for purposes of matching contributions

SECURE 2.0 allows 401(k) plan, 403(b) plan, or SIMPLE IRA matching contributions with respect to "qualified student loan payments." A "qualified student loan payment" is any indebtedness incurred by the employee solely to pay the employee's qualified higher education expenses. Governmental employers are also permitted to make matching contributions in a section 457(b) plan or another tax-qualified plan with respect to these repayments**. This provision is effective for plan years beginning after December 31, 2023.**

Improving coverage for part-time employees

The first SECURE Act requires employers to allow long-term, part-time employees to make elective deferral contributions to the employers' 401(k) plans once the part-time employees have completed three consecutive years of service (where the employee completes at least 500 hours of service). The first group of such employees would become eligible to make elective deferral contributions in plan years beginning after December 31, 2023. **SECURE 2.0 reduces the three-consecutive-year rule to two consecutive years, effective for plan years beginning after December 31, 2024.**

Small immediate financial incentives for contributing to a plan

SECURE 2.0 allows employers to offer *de minimis* financial incentives, such as low-dollar gift cards, to encourage 401(k) and 403(b) plan participation. Such incentives may not be financed with plan assets. **This provision is effective for plan years beginning after December 31, 2022.**

Emergency savings accounts linked to individual account plans

Employers may offer pension-linked emergency savings accounts to non-highly compensated employees. Employees may be automatically enrolled into these accounts at up to 3% of their salary. Employee cumulative contributions may not exceed $2,500.

Retirement savings lost and found

SECURE 2.0 directs the Department of Labor to create a national online searchable "lost and found" database for participants to find their plan administrators of ERISA-covered pension and defined contribution plans, *e.g.*, 401(k) and 403(b) plans.

Optional treatment of employer matching or nonelective contributions as Roth contributions

SECURE 2.0 permits defined contribution plans to allow participants to elect to receive matching contributions on an after-tax Roth basis, **effective for contributions after December 29, 2022.**

Higher catch-up limit at age 60 through 63

SECURE 2.0 increases the retirement plan catch-up contribution limits to the greater of $10,000 or 50% more than the regular catch-up amount for individuals ages 60 through 63. The increased amounts are indexed for inflation after 2025. **This provision is effective for taxable years beginning after December 31, 2024.**

Treatment of catch-up contributions for high earners

SECURE 2.0 provides that all catch-up contributions to qualified retirement plans will be Roth contributions for employees with annual compensation that is greater than $145,000 (adjusted for cost-of-living), **effective for taxable years beginning after December 31, 2023.**

Amendments to increase benefits for previous plan year allowed until employer tax return due date

SECURE 2.0 permits plan amendments increasing benefits to be adopted retroactively, no later than the due date of the employer's tax return for the plan year in which the amendment was effective. **This provision is effective for plan years beginning after December 31, 2023.**

WITHDRAWALS AND DISTRIBUTIONS

Increase in required beginning date for mandatory distributions

SECURE 2.0 increases the required minimum distribution age from age 72 to age 73 **effective on and after January 1, 2023, and to age 75 starting on January 1, 2033.**

Updating dollar limit for mandatory distributions

SECURE 2.0 increases the limit for mandatory retirement plan distributions to be automatically rolled over to an IRA from $5,000 to $7,000, **effective for distributions made after December 31, 2023.**

Employee certification that deemed hardship distribution conditions are met

SECURE 2.0 allows participants, under certain circumstances, to self-certify that they have incurred a hardship entitling them to withdrawals. **This provision is effective for plan years beginning after December 29, 2022.**

Penalty-free withdrawals for certain emergency expenses

SECURE 2.0 provides an exception from the 10% early distribution tax on distributions from tax-favored retirement plans and IRAs, for distributions made for unforeseeable or immediate financial needs relating to personal or family emergency expenses. Such emergency expense distributions are limited to no more than $1,000, and only one distribution is permissible per year. No further emergency distributions are allowed for three years unless the distribution is repaid to the plan. **This provision is effective for distributions made after December 31, 2023.**

Penalty-free withdrawals for individual cases of domestic abuse

SECURE 2.0 allows retirement plans to permit participants to withdraw the lesser of $10,000, indexed for inflation, or 50% of the participant’s account if they self-certify that they are the victim of domestic abuse. Such distributions are not subject to the 10% tax on early distributions. Participant may repay the withdrawal over three years. **This provision is effective for distributions made after December 31, 2023.**

Penalty-free distributions for individuals with a terminal illness

SECURE 2.0 provides that retirement plan distributions to terminally ill individuals are not subject to the 10% early distribution tax. **This provision is effective for distributions made after December 29, 2022.**

Distributions in connection with qualified federally declared disasters

SECURE 2.0 allows up to $22,000 to be distributed from employer-sponsored retirement plans or IRAs for individuals affected by a federally declared disaster. **This provision is effective for disasters occurring on or after January 26, 2021.**

Repayment of qualified birth or adoption distribution limited to three years

SECURE 2.0 limits the time during which qualified birth or adoption distributions from a retirement plan may be repaid to the plan to three years. **This provision is effective for distributions made after December 29, 2022**, and retroactive to the three-year period following the date on which a distribution was received.

Exemption for certain automatic portability transactions

SECURE 2.0 permits a retirement plan service provider to offer default IRA automatic portability services. If a participant's account balance under a prior employer's plan was between $1,000 and $5,000 and rolled into a default IRA, the retirement plan service provider may roll such default IRA into the participant's new employer's retirement plan, unless the participant elects otherwise. **This provision is effective for transactions occurring on or after December 29, 2023, the date that is 12 months after the date of enactment of SECURE 2.0.**

Reduction in excise tax on certain accumulations in qualified retirement plans

SECURE 2.0 reduces the penalty for failure to take required minimum distributions from 50% to 25% of the amount of the required distribution. The penalty with respect to an IRA may be further reduced to 10% if the failure is corrected in a timely manner. **This provision is effective for taxable years beginning after December 29, 2022.**

Roth plan required minimum distribution rules

Prior to SECURE 2.0, employer retirement plan Roth accounts were subject to required minimum distributions before the participant's death, but Roth IRAs were not subject to pre-death distribution requirements. SECURE 2.0 eliminates the pre-death minimum distribution requirements for retirement plan Roth accounts **effective for taxable years beginning after December 31, 2023.**

Eliminating a penalty on partial annuitization

SECURE 2.0 permits the account owner of a tax-preferred retirement account that also holds an annuity to elect to aggregate distributions from both portions of the account for purposes of determining minimum distributions. **This provision is effective December 29, 2022.**

INDIVIDUAL RETIREMENT ACCOUNTS

Indexing the IRA catch-up limit

SECURE 2.0 indexes the IRA catch-up contribution limit **effective for taxable years beginning after December 31, 2023.**

One-time election for qualified charitable distribution to split-interest entity; increase in qualified charitable distribution limitation

SECURE 2.0 allows a one-time, $50,000 distribution to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts, **effective for distributions made in taxable years beginning after December 29, 2022.** In addition, the annual IRA charitable distribution limit of $100,000 is indexed for inflation, **effective for distributions made in taxable years ending after December 29, 2022.**

Certain distributions from long-term qualified tuition programs to Roth IRAs

SECURE 2.0 permits section 529 college savings account beneficiaries to roll over up to $35,000 over the course of their lifetime from any 529 account in their name to their Roth IRA, subject to the Roth IRA annual contribution limits. The 529 account must have been open for more than 15 years. **This provision is effective with respect to distributions after December 31, 2023.**

Tax treatment of an IRA involved in a prohibited transaction

SECURE 2.0 clarifies that if an individual has multiple IRAs, only the IRA with respect to which a prohibited transaction occurs will be disqualified. **This provision is effective for taxable years beginning after December 29, 2022.**

SMALL EMPLOYERS, SIMPLE PLANS AND SEPs

Modification of credit for small employer pension plan startup costs

SECURE 2.0 increases the startup credit for establishing a retirement plan from 50% to 100% for employers with up to 50 employees. The credit will be increased for eligible employer plans other than a defined benefit plan. The additional credit generally will be an applicable percentage of the amount contributed by the employer on behalf of employees, up to a per-employee cap of $1,000. This full additional credit is limited to employers with 50 or fewer employees and phased out for employers with between 51 and 100 employees. The applicable percentage is 100% in the first and second years, 75% in the third year, 50% in the fourth year, 25% in the fifth year, and no credit for tax years thereafter. **This provision is effective for taxable years beginning after December 31, 2022.**

Military spouse retirement plan eligibility credit for small employers

SECURE 2.0 provides a tax credit for small employers with respect to their defined contribution plans if the employer (i) makes military spouses immediately eligible for plan participation within two months of hire, (ii) upon plan eligibility, makes the military spouse eligible for any matching or nonelective contribution that they would have been eligible for otherwise at two years of service, and (iii) makes the military spouse 100% immediately vested in all employer contributions. **This provision is effective for taxable years beginning after December 29, 2022.**

Additional nonelective contributions to SIMPLE plans

SECURE 2.0 permits an employer to make additional contributions to each employee of a SIMPLE plan in a uniform manner, provided that the contribution may not exceed the lesser of 10% of compensation or $5,000 (indexed). **This provision is effective for taxable years beginning after December 31, 2023.**

Contribution limit for SIMPLE plans.

SECURE 2.0 increases the SIMPLE IRA annual deferral limit and the catch-up contribution at age 50 by 10%, for employers with under 26 employees. An employer with 26 to 100 employees is permitted to provide higher deferral limits if it either provides a 4% matching contribution or a 3% employer contribution. SECURE 2.0 makes similar changes to the contribution limits for SIMPLE 401(k) plans. **This provision is effective for taxable years beginning after December 31, 2023.**

SIMPLE and SEP Roth IRAs

SECURE 2.0 allows SIMPLE IRAs to accept Roth contributions and allows simplified employee pension plans (“SEPs”) to treat employee and employer SEP contributions as Roth contributions (in whole or in part). **These provisions are effective for taxable years beginning after December 31, 2022.**

Tax treatment of certain nontrade or business SEP contributions

SECURE 2.0 permits employers of domestic employees (*e.g.*, nannies) to provide retirement benefits for such employees under a SEP. **This provision is effective for taxable years beginning after December 29, 2022.**

POOLED EMPLOYER AND MULTIPLE EMPLOYER PLANS

Modification of Pooled Employer Plans

SECURE 2.0 clarifies that a pooled employer plan ("PEP") may designate a named fiduciary to collect contributions to the plan. Such fiduciary would be required to implement written contribution collection procedures that are reasonable, diligent, and systematic. **This provision is effective for plan years beginning after December 31, 2022.**

Multiple Employer 403(b) Plans

SECURE 2.0 allows 403(b) plans, which generally are sponsored by charities, educational institutions, and non-profits, to participate in multiple employer plans ("MEPs") and PEPs, and includes relief from the "one bad apple" rule so that the violations of one employer do not affect the tax treatment of employees of other participating employers. **This provision is effective for plan years beginning after December 31, 2022.**

EMPLOYEE STOCK OWNERSHIP PLANS

Deferral of tax for certain sales of employer stock to an ESOP sponsored by an S corporation

Under current law, an individual owner of stock in a non-publicly traded C corporation that sponsors an employee stock ownership plan ("ESOP") may elect to defer the recognition of gain from the sale of such stock to the ESOP if the seller reinvests the sales proceeds into qualified replacement property, such as stock or other securities issued by a U.S. operating corporation. After the sale, the ESOP must own at least 30% of the employer corporation's stock. SECURE 2.0 expands this gain deferral provision, subject to a 10% limit on gain deferred, to S corporation ESOPs. **This provision is effective for sales made after December 31, 2027.**

Certain securities treated as publicly traded in case of ESOPs

SECURE 2.0 updates certain ESOP rules related to whether a security is a "publicly traded employer security" and "readily tradeable on an established securities market." SECURE 2.0 treats certain non-exchange traded securities as "publicly traded employer securities" under Internal Revenue Code section 401(a)(35) so long as the security meets specified criteria. **This provision is effective for plan years beginning after December 31, 2027**.

403(b) AND GOVERNMENTAL PLANS

Enhancement of 403(b) plans

SECURE 2.0 permits 403(b) custodial accounts to participate in group trusts with other tax-preferred savings plans and IRAs. **This provision is effective after December 29, 2022.**

Hardship withdrawal rules for 403(b) plans

SECURE 2.0 conforms the 403(b) hardship withdrawal rules to the 401(k) hardship withdrawal rules, **effective for plan years beginning after December 31, 2023.**

Eliminate the "first day of the month" requirement for governmental section 457(b) plans

Currently, participants in a governmental 457(b) plan must request changes in their deferral rate prior to the beginning of the month in which the deferral will be made. SECURE 2.0 permits participants in governmental section 457(b) plans to request changes in their deferral rates at any time prior to the date that the compensation being deferred is made available. **This provision is effective for taxable years beginning after December 29, 2022.**

Eligible age for exemption from early withdrawal penalty

The 10% additional tax on early distributions from tax preferred retirement savings plans does not apply to a distribution from a governmental plan to a public safety officer who is at least age 50. SECURE 2.0 extends the exception to public safety officers with at least 25 years of service with the employer sponsoring the plan and **is effective for distributions made after December 29, 2022.**

MISCELLANEOUS

Expansion of Employee Plans Compliance Resolution System

SECURE 2.0 expands the Employee Plans Compliance Resolution System ("EPCRS") to (i) allow more types of errors to be corrected internally through self-correction, (ii) apply to inadvertent IRA errors, and (iii) exempt certain failures to make required minimum distributions from the otherwise applicable excise tax. **This provision is effective December 29, 2022.**

Safe harbor for corrections of employee elective deferral failures

SECURE 2.0 allows a grace period for plans to correct, without penalty, reasonable errors in administering automatic enrollment and automatic escalation features. Errors must be corrected prior to 9½ months after the end of the plan year in which the mistakes were made. **This provision is effective for errors after December 31, 2023.**

Recovery of retirement plan overpayments

SECURE 2.0 allows retirement plan fiduciaries not to seek to recover overpayments made to retirees. **This provision is effective December 29, 2022.**

Application of top-heavy test to defined contribution plans covering excludable employees

SECURE 2.0 allows an employer to perform the top-heavy test separately on the non-excludable and excludable employees. **This provision is effective for plan years beginning after December 31, 2023.**

Statute of limitations for excise tax on excess contributions and certain accumulations

SECURE 2.0 provides that a three-year period of limitations begins when the taxpayer files an individual tax return (Form 1040) for the year of the violation, except in the case of excess contributions, in which case the period of limitations runs six years from the date Form 1040 is filed. **This provision is effective December 29, 2022**

Retroactive first year elective deferrals for sole proprietors

SECURE 2.0 allows sole proprietors or single member LLCs that establish a new 401(k) plan for an initial taxable year after the end of that taxable year, but before the employer's tax filing date, to receive employee contributions up to the date of the employee's tax return filing date for the initial year. **This provision is effective for plan years beginning after December 31, 2022.**

Eliminating unnecessary plan requirements related to unenrolled participants

SECURE 2.0 removes the requirement that employers provide certain intermittent ERISA or Internal Revenue Code notices to unenrolled participants who have not elected to participate in a workplace retirement plan. However, 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. **This provision is effective for plan years beginning after December 31, 2022.**

Requirement to provider paper statements in certain cases

SECURE 2.0 amends ERISA to generally provide that defined contribution plans are required to provide a paper benefit statement to participants at least once annually. For defined benefit plans, unless a participant elects otherwise, the statement that must be provided once every three years under ERISA must be a paper statement. **This provision is effective for plan years beginning after December 31, 2025.**

Information needed for financial options risk mitigation

SECURE 2.0 amends ERISA to require pension plan administrators to provide plan participants and retirees with critical information that would allow people considering what is best for their financial futures to compare between annuitized benefits offered under the plan and an actuarially equivalent lump-sum distribution, and would explain how the lump sum was calculated, the ramifications of accepting a lump-sum distribution, such as the loss of certain federal protections, details about the election period, where to follow up with questions, and other information. **This provision shall not become effective until the Department of Labor issues regulations. The earliest date that such regulations could take effect would be December 29, 2023.**

Enhancing retiree health benefits in pension plans

Under current law, an employer may use assets from an overfunded pension plan to pay retiree health and life insurance benefits. These rules sunset at the end of 2025. **SECURE 2.0 extends the sunset date to the end of 2032.**

Plan amendment deadline

Plan amendments made pursuant to SECURE 2.0 may be made on or before the last day of the first plan year beginning on or after January 1, 2025 (2027 in the case of governmental plans) as long as the plan operates in accordance with the SECURE 2.0 changes as of the applicable effective dates as reflected in the amendment. SECURE 2.0 also extends 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.

TEAM MEMBERS

Marc Purintun	Partner & Chair	mpurintun@williamsmullen.com | 804.420.6310
Brydon M. DeWitt	Partner	bdewitt@williamsmullen.com | 804.420.6917
Nona K. Massengill	Partner	nmassengill@williamsmullen.com | 804.420.6569
Allison J. Carlon	Associate	acarlon@williamsmullen.com | 804.420.6268
Claire G. Pollock	Paralegal	cpollock@williamsmullen.com | 804.420.6577