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Employee Benefits

Accounting & Business Update 2022

October 19, 2022

Here with you today

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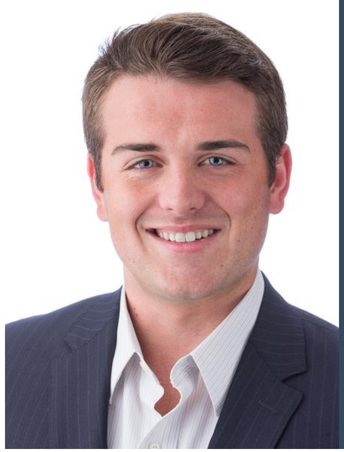

Lukas Eldridge

Retirement Plan Advisor

Sentinel Benefits & Financial Group

SAS 136 - New Employee Benefit Plan Audit Standard

- Creates an auditing standard specific to employee benefit plans
- No longer ERISA Disclaimer audits but Section 103(a)(3)(C) audits
- New audit report
- Provides guidance on areas that should be audited based upon risk assessment
- Plan Administrator is responsible for ensuring certified institution is a qualified institution under 29 CFR 2520.103-5 of ERISA
- Provides for required communication regarding compliance findings with plan provisions

Common Deficiencies in ERISA Section 103(a)(3)(C) Audit Certifications

- No certification or incomplete certification
- Omissions or errors in the certification
- Information is incorrectly certified
- Incorrect / improper information

Make sure certification is issued by a qualified organization, covers correct information, covers full reporting period, is signed by an authorized individual and any qualifying language does not conflict with the assertion that certified information is complete and accurate.

Common Audit and Compliance Findings

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- Timeliness of contributions
- Eligible compensation used for contributions does not meet plan definitions
- Missed deferrals due to eligibility errors
- Contributions exceeding IRS compensation limits
- Employer match missed or computed incorrectly
- Not using forfeitures on a timely basis
- Payment from plans back to sponsor - almost always a reportable nonexempt transaction
- Filing 5500 without required audit report
- Loan terms not being correctly followed
- Vesting errors and hardship withdrawals

Current DOL Initiatives and Issues

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Cybersecurity concerns

- Plan administrators and those charged with Governance have an ERISA fiduciary duty with respect to the plan
- Plan sponsors must monitor plan service providers, including how they store and protect participant data
- Protection of plan assets is of upmost importance
- Sponsors must also have strong cyber security controls over Plan assets and data

Current DOL Initiatives and Issues (cont.)

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Some key controls to consider include the following for sponsors as well as custodians and TPAs:

- Security training of sponsor personnel
- Cyber Insurance - sponsor and service providers
- Encryption of sensitive data transferred
- Strong access controls and passwords
- SOC 1 and SOC 2 reports, especially for trustees and custodians
- Review SOC 1 and SOC 2 reports annually - ensure relevant sponsor user controls are in place

Current DOL Initiatives and Issues (cont.)

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DOL Compliance Assistance release No. 2022-01, 401(k) Plan Investments in "Cryptocurrencies"

- DOL has serious concerns about prudence of fiduciaries' decision to expose participants to crypto investments (direct or indirect)
- Too volatile and speculative

Guidance For Missing Participants

- Compliance Assistance release 2021-01
- ERISA Guidance to assist fiduciaries

DOL Enforcement Notices

- Do not ignore notices
- Significant penalties

Sentinel Benefits Overview & Fiduciary Best Practices

Retirement Plan Services

Sentinel Benefits
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Agenda

- ✓ Roles of a Fiduciary
- ✓ Fiduciary Best Practices
- ✓ Retirement Plan Litigation and How to Stay Out of Court
- ✓ Legislative Updates

Roles of a Fiduciary

Fiduciaries are in a position of trust. Those persons or entities who serve as fiduciaries must act in accordance with the best interests of plan participants and beneficiaries.

A fiduciary may be held personally liable for their breach and those of co-fiduciaries.

Fiduciary liability is not determined by investment performance and outcomes but rather whether or not a prudent process was followed.

- Disclose conflicts of interest
- Carry out duties with care, skill and diligence that a prudent person would use
- Diversify investments to reduce risk of large investment losses
- Follow the terms of the plan document
- Pay only reasonable expenses from plan assets

Who is and is Not a Fiduciary?

WHO IS A FIDUCIARY

- ✓ **Employer:** Every plan must have at least one fiduciary
- ✓ **Trustee:** Plan assets must be held in a trust or in a custodial account unless the plan is funded exclusively with insurance contracts
- ✓ **Plan Administrator – ERISA 3(16):** Plan Sponsor is typically named the ERISA 3(16) plan administrator. Responsible for the day-to-day administrative decisions
- ✓ **Investment Advisor – ERISA 3(21) & 3(38):** Per the new DOL Regulations, providing investment “advice” for a fee to an ERISA Plan makes you a fiduciary

WHO IS NOT A FIDUCIARY

- ✓ **Recordkeepers and Third Party Administrators (TPAs):** Act at the direction of the named fiduciary (Plan Sponsor), usually based on a service agreement, when performing their duties
- ✓ **Attorneys, Accountants and Consultants:** Often hired to advise Plan Sponsors but lack the discretionary authority with respect to the plan and thus not subject to the ERISA fiduciary rules

Fiduciary Best Practices

Sample Process Documents:

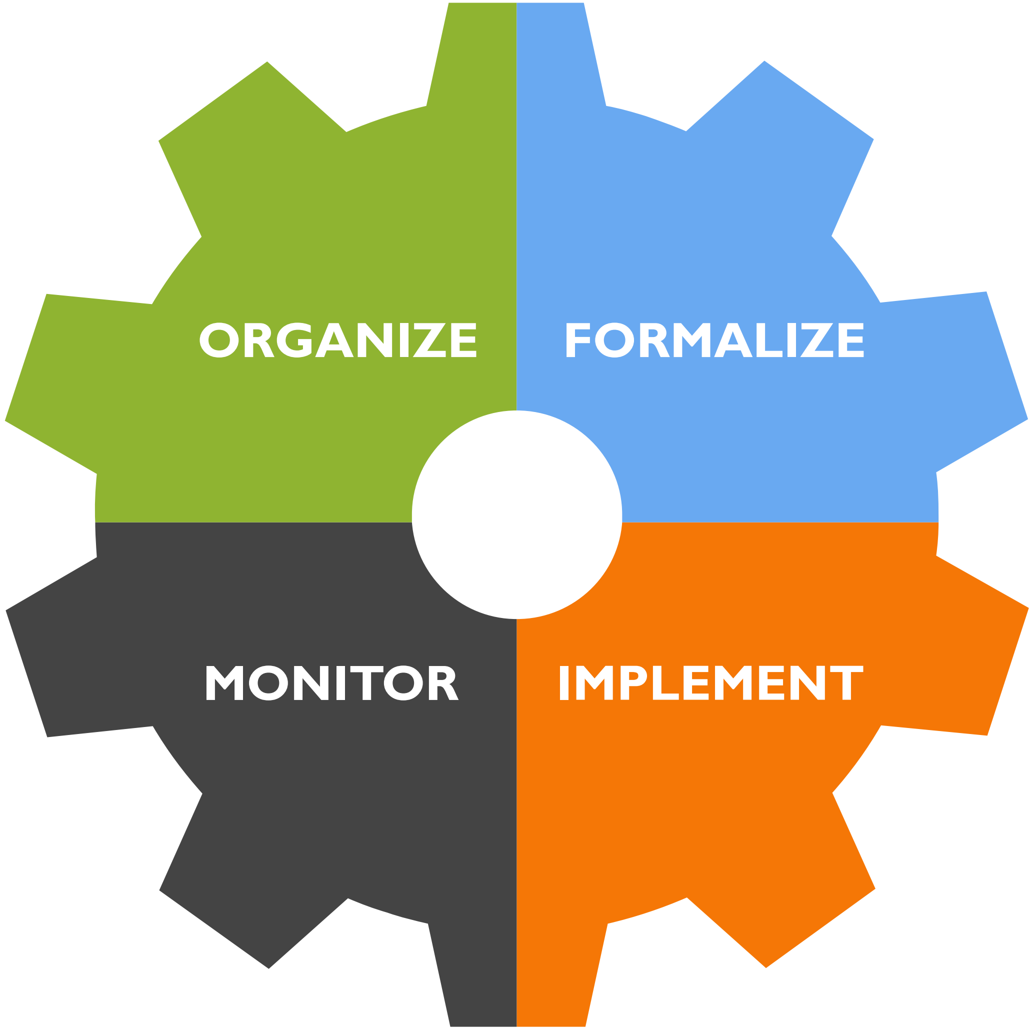
- Investment Policy Statement (IPS)
- Committee Bylaws
- Fiduciary Acknowledgement Letters
- Conflict of Interest Policy
- Monitoring reports
- Benchmark reports
- Education Policy / Fee Policy
- Meeting minutes

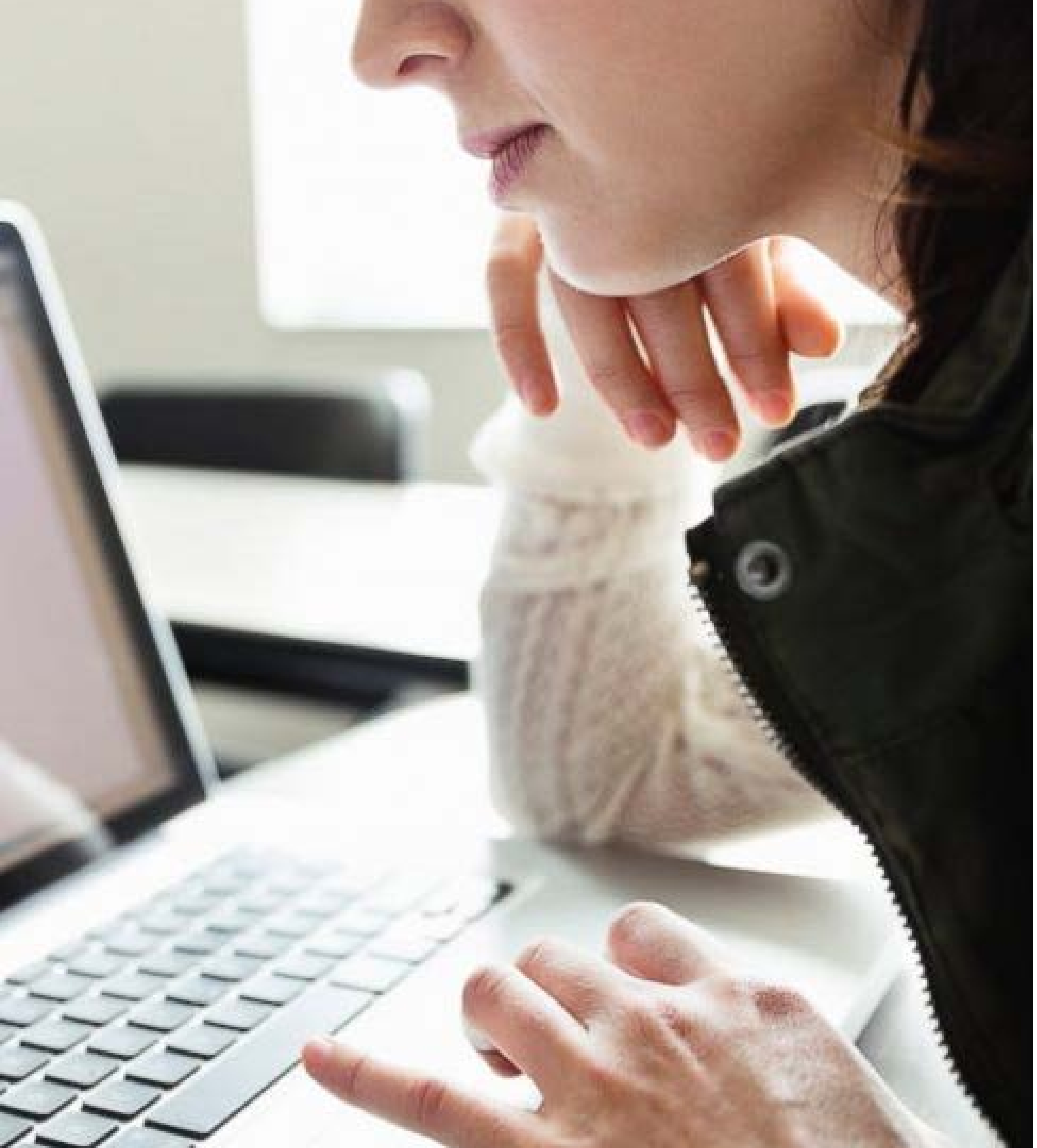
Sample Training:

- Fiduciary training
- Brainshark webinars

Sentinel Vault:

- Secure online repository
- Houses fiduciary reports and information





Investment Policy Statement

The Plan's Investment Policy Statement (IPS) should include, at minimum:

- Roles and responsibilities of all parties involved in the oversight/administration of the Plan
- The Plan Sponsor's criteria for selecting and monitoring investments (such as performance criteria and benchmarks)
- The rationale for deciding when to replace investments that are not performing well or no longer suit the Plan's participants

Retirement Plan Fee Benchmarking

How does your plan measure up?

What is it?

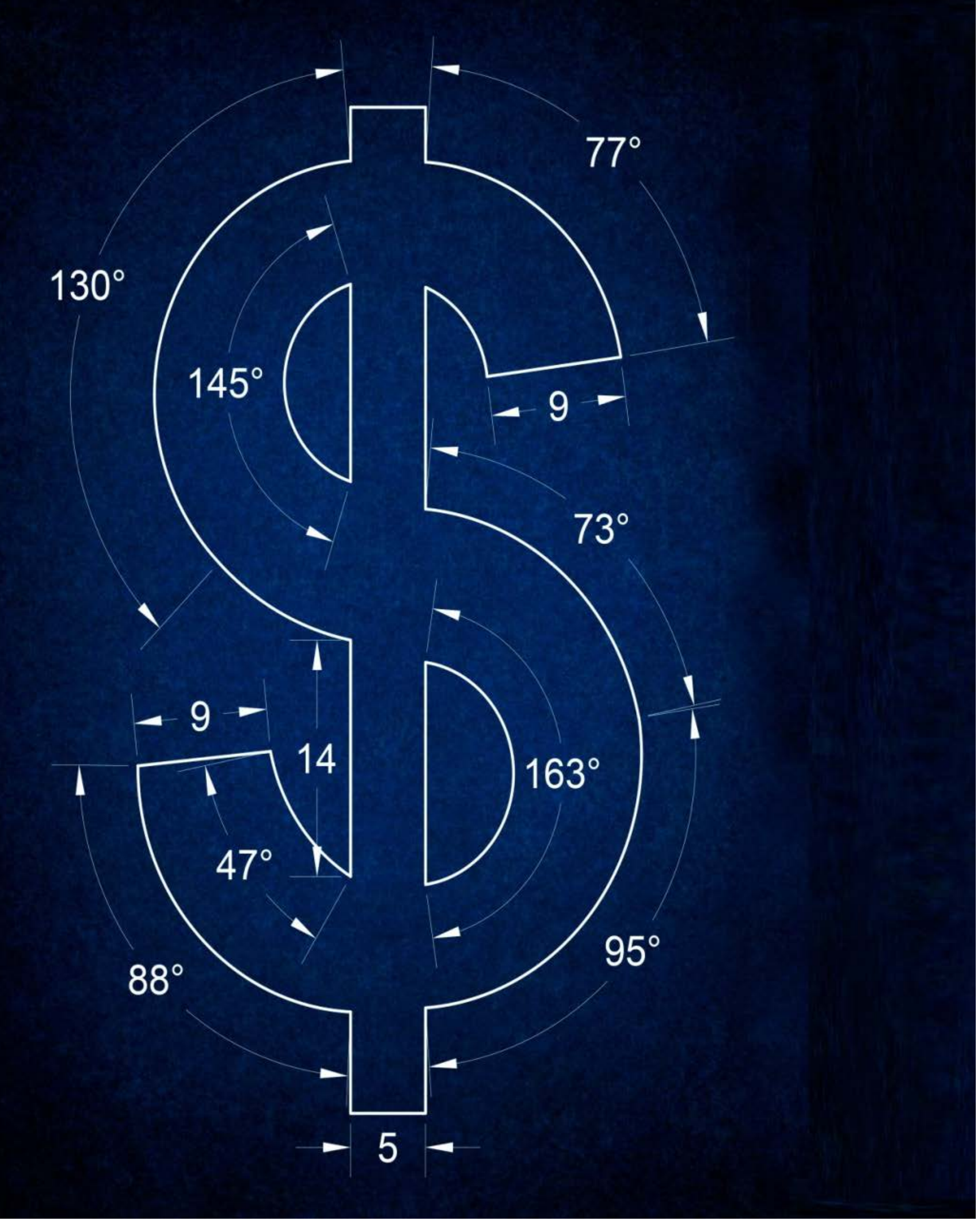
- A process that can benchmark plan fees and features against similar sized plans
- Provides a detailed breakdown of fees by service provider

Why is it important?

- Plan fiduciaries have a responsibility to ensure fees are “reasonable in light of services offered”
- Helps determine if the total plan costs are in line with the current marketplace

When to use it?

- Alternative or preliminary step for taking the Plan out to a formal RFI/RFP
- Benchmark plan every 3 years
- Ideal for plans that have been with the same providers for an extended period of time



Retirement Plan Litigation

2022 Cases:

- 23 cases have been filed for 2022, on pace for 80-100 this year.
- The rate of dismissal continues to decline. Now 9 out of 10 cases make it to the discovery phase.
- Most cases that survive dismissal are settled because of potential high damages.
- Over 55 settlements since 2020. Settlements exceed $2 billion.
- 10% of plans being sued are under $500 million in plan assets.

https://www.forbes.com/sites/brianmenickella/2022/04/08/new-supreme-court-ruling-has-major-implications-for-fiduciaries-heres-what-you-need-to-know/?sh=1058a4566380, 4/8/2022

Hughes vs. Northwestern University

Facts

– Using multiple recordkeepers

– Excessive recordkeeping fees ($153-$215/participant)

– Failure to go through RFP process (shows an effort to find competitive pricing)

– Hundreds of redundant investment options (extremely duplicative, causes confusion for investors)

– Over 100 investments in retail share classes (have mirroring share classes with less fees)

Takeaways

– Limit the investment menu item so the committee can focus on all options

– Benchmark fees; always use the lowest available fee class(es)

– Hire a good consult, monitor what they are doing and keep the board informed of what the committee is up to

Fallout

– The pleading standard continues to be diluted. Nearly every decision after the Supreme Court ruling has denied the motion to dismiss and allowed the case to proceed.

IRS Correction Programs

Common Mistakes that Lead to Correction

- ✓ Exclusion of eligible employees
- ✓ Failure to make timely RMD’s under Section 401(a)(9)
- ✓ Failure to make matching contributions per plan terms.
- ✓ Improper exclusion of bonuses, overtime and/or commissions.

Employee Plans Compliance Resolutions System (EPCRS) offers three correction programs:

- ✓ Self Correction Program Correct certain plan failure without contacting the IRS or paying a user fee.
- ✓ Voluntary Correction Program (VCP) Correct failures not eligible for SCP and get IRS approval that the failures were properly corrected.
- ✓ Audit Closing Agreement Program (CAP) Resolve failures discovered during an IRS audit that can’t be corrected using SCP.

https://www.employmentlawbusinessguide.com/wp-content/uploads/sites/161/2022/01/Tax-Exempt-and-Government-Entities-Fiscal-Year-2021-Accomplishments-Letter.pdf

Proposed Legislation: SECURE Act 2.0

Background Information

- ✓ Securing a Strong Retirement Act, known as SECURE Act 2.0, builds on the Setting Every Community Up for Retirement Enhancement (Secure Act) signed into law in December 2019
- ✓ On March 29, 2022, the House overwhelmingly approved the bipartisan act by a vote of 414 to 5
- ✓ The bill still needs to be reconciled, pass the Senate and be signed by the President

Key Changes Included in the Proposed SECURE Act 2.0

- ✓ Mandatory automatic enrollment/escalation for new plans with a start date on or after January 1, 2024. Initial automatic enrollment would be 3% with annual increases to 10%.
- ✓ Expand catch-up contributions beginning in the 2024 tax year to permit those ages 62 through 64 to contribute up to $10,000 as compared to the current maximum of $6,500. Require all catch-up contributions to be Roth beginning in 2023.
- ✓ Allow Roth matching contributions to be chosen at an employee's discretion. If chosen as a plan feature by the employer, this provision would become effective as early as 2022.

Proposed Legislation: SECURE Act 2.0

Key Changes Included in the Proposed SECURE Act 2.0

- ✓ Delay the required minimum distribution age to 73 for those attaining age 72 during 2022, to 74 in 2029 and to 75 in 2032.
- ✓ Expedite part-time workers' participation to make employees with two consecutive years of at least 500 hours eligible to defer as early as January 1, 2023.
- ✓ Authorize student loan matching by treating student loan payments as deferrals allowing the employer to match the loan payments. If chosen as a plan feature by the employer, this provision would be effective as early as January 1, 2023.
- ✓ Increase plan start-up credit effective for start-up plans beginning in the 2022 tax year.
- ✓ Create a new additional tax credit for small employers of up to $1,000 of employer contributions per employee.

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