

SECURE 2.0 Act Amendment Good Faith Amendment for EZ-k 401(k) Plans



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On December 29, 2022, the Setting Every Community Up for Retirement Enhancement Act of 2022 ("SECURE 2.0 Act of 2022") was signed into law. Continuing the initiatives of the SECURE Act of 2019, SECURE 2.0 Act of 2022 (SECURE 2.0), Division T, represents a component of the "Consolidated Appropriations Act, 2023".

Some sections of the Act became effective on "date of enactment" or "date of enactment of this Act", meaning December 29, 2022, while others phased in over years that followed.

ADDENDUM FOR SETTING EVERY COMMUNITY UP FOR RETIREMENT ENHANCEMENT ACT OF 2022 (SECURE 2.0)

SECTION 1: PREAMBLE - AMENDMENT OF THE PLAN FOR SECURE 2.0

1.01 Adoption and Effective Date of Good Faith Amendment:

This Amendment is intended as a good faith effort ("good faith amendment") to comply with the applicable requirements of the Setting Every Community Up for Retirement Enhancement Act of 2022 (SECURE 2.0 Act), and corresponding guidance (the "Applicable Law"). The urgency of all pieces of legislation left many practitioners to develop operational procedures until IRS and DOL publish final and explicit guidelines. This document shall serve as a good faith amendment until, and if, such time that the Treasury provides required Plan document language.

This Amendment is to be construed in accordance with the Applicable Law and both the Amendment, and the Applicable Law will supersede any inconsistent Plan provisions. Timely adopted, this amendment will serve to fix any defects or minor omissions with regard to the applicable provisions.

1.02 Supersession of Inconsistent Provisions:

This Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

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1.03 Adoption by the Mass Submitter

If the employer adopts all default provisions in the Adoption Agreement Addendum for Optional Provisions of the SECURE 2.0 Act, pursuant to the provisions of the Plan and Revenue Procedure 2021-37 in the case of a pre-approved 403(b) plan, or Revenue Procedure 2017-41 in the case of a pre-approved Defined Contribution Plan, the Mass Submitter hereby adopts this Amendment on behalf of all adopting employers to be effective on the applicable date(s) pursuant to the provisions of the intended provision as described in the Acts. No further action (i.e. no signature) is required by the employer on the Adoption Agreement Addendum.

1.04 Adoption by the Employer:

If the employer affirmatively adopts an optional provision (i.e. not a Default), then such employer must sign the Adoption Agreement Addendum. In doing so, this amendment is to be effective on the applicable date(s) pursuant to the provisions of the intended provision as described in the Acts, or on the effective date provided by the employer, if later.

SECTION 2: SECURE 2.0 ACT PROVISIONS

PART A. OPTIONAL PROVISIONS

2.01 Higher Catch-Up Limit to Apply at Age 60, 61, 62, and 63

For taxable years beginning after December 31, 2024, the catch-up limit is the greater of \$10,000 or 150 percent of the age 50 catch-up limit in effect for the year for individuals who will attain ages 60, 61, 62 and 63 during the tax year. After 2024, the \$10,000 limit is adjusted by the Secretary of the Treasury for cost-of-living increases.

2.02 Treatment of Student Loan Payments as Elective Deferrals for Purposes of Matching Contributions

A Qualified Student Loan Payment (QSLP) is a payment that was made by an employee in repayment of a qualified education loan (as defined in section 221(d)(1)) incurred by the employee for the sole purpose of qualified higher education expenses of the employee. Effective for contributions made for plan years beginning after 12/31/23, an employer may make a matching contribution to a defined contribution plan on account of an employee's QSLP if the employee is eligible to receive elective deferral matches, and the match conditions are the same as those otherwise provided under the plan.

2.03 Withdrawals for Certain Emergency Expenses

The term "emergency personal expense distribution" means any distribution made from the plan to an individual for purposes of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses. Not more than one distribution of a maximum of \$1,000 per calendar year is permitted to be treated as an emergency personal expense distribution by any individual. Such distribution under section 72(t)(2)(I)(iv) is effective after December 31, 2023, and is not subject to the additional 10 percent excise tax on early distributions. The plan will accept the repayment of an emergency personal expense distribution from an individual if the individual is eligible to make a rollover contribution to that plan at the time the individual wishes to repay the emergency personal expense distribution to the plan.

2.04 Emergency Savings Accounts Linked to Individual Account Plans

Effective for plan years beginning after 12/31/23, employers have the option to offer, or automatically enroll, non-highly compensated employees into pension-linked emergency savings accounts (PLESAs) funded by matched or unmatched elective deferrals. The rate is no more than 3 percent of their salary, and the portion of an account attributable to the employee's contribution is \$2,500 or lower as set by the employer. Such accounts are subject to separate accounting within the plan.

2.05 Penalty-Free Withdrawal from Retirement Plans for Individual Case of Domestic Abuse

If elected by the employer in the Adoption Agreement, a Participant's Elective Deferrals may be distributed as a Distribution in Case of Domestic Abuse. Distribution in Case of Domestic Abuse is any distribution equal to the lesser of \$10,000 or fifty percent of the present value of the nonforfeitable accrued benefit of the employee from the Plan to a Participant if made during the 1-year period beginning on any date that the participant is a victim of domestic abuse by a spouse or domestic partner. The term "domestic abuse" means physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim's ability to reason independently, including by means of abuse of the victim's child or another family member living in the household. Distributions in Case of Domestic Abuse shall not be treated as an eligible rollover distribution as defined in section 10.12(b)(2). A Distribution in Case of Domestic Abuse is effective for a

distribution made after December 31, 2023, and is not subject to the 10% excise tax on early distributions.

2.06 Exception to Penalty on Early Distributions from Qualified Plans for Individuals with a Terminal Illness

Effective after December 29, 2022, a “terminally ill individual distribution” means any distribution under the plan on or after the date the Participant was certified by a physician as having a terminal illness that can reasonably be expected to result in death within 84 months of the certification. Such terminally ill individual is exempt from the 10 percent additional tax under section 72(t)(2)(L). An employee may recontribute any portion of a terminally ill individual distribution (up to the entire amount of the terminally ill individual distribution) to the plan in which the employee is a beneficiary and to which a rollover can be made under sections 402(c), 403(a)(4), 403(b)(8), or 408(d)(3), as applicable. Rules similar to recontributions of qualified birth or adoption distributions in section 72(t)(2)(H)(v) apply for purposes of terminally ill individual distributions.

2.07 Special Rules for Use of Retirement Funds in Connection with Qualified Federally Declared Disasters

The rules relating to the use of retirement funds in the case of a federally declared disaster were made permanent under SECURE 2.0. Effective for disasters occurring on or after 1/26/21, expanded distribution options and favorable tax treatment may apply for up to \$22,000 of qualified disaster recovery distributions from eligible retirement plans (e.g. 401(k), 403(b), and IRA) to qualified individuals. These payments are taken into account as gross income over 3 years and may be repaid to an eligible retirement account. Additionally, amounts distributed prior to the disaster to purchase a home can be recontributed, and an employer is permitted to provide for a larger amount to be borrowed from a plan by affected individuals (100% up to \$100,000), and for additional time (one-year extension) for repayment of plan loans owed by affected individuals.

2.08 Optional Treatment of Employer Matching or Nonelective Contributions as Roth Contributions. Effective December 29, 2022, the plan may permit Participants to elect to receive matching and/or employer nonelective contributions as designated Roth contributions but only if the employee is fully vested in that type of contribution at the time it is allocated to the employee’s account.

PART B. AMENDMENTS THAT WILL APPLY AUTOMATICALLY

The following provisions will apply automatically based on the description below.

2.09 Increase in Age for Required Beginning Date for Mandatory Distributions

Starting January 1, 2023, the age that determines the required beginning date for required minimum distributions (RMDs) increased from 72 to 73. Starting January 1, 2033, that age will further increase to 75.

2.10 Improving Coverage for Part-Time Workers

A long-term part-time employee is an employee who is eligible to participate in a qualified CODA solely by reason of having: (1) completed three consecutive 12-month periods on or after January 1, 2021, during each of which the employee is credited with at least 500 hours of service as defined in § 410(a)(3)(C)) (or, for plan years beginning after December 31, 2024, completed two such consecutive 12-month periods); and (2) attained the age specified in § 410(a)(1)(A)(i) by the close of the last of those 12-month periods. However, under Code §§ 401(k)(15)(D)(ii) and 410(b)(3), certain employees who are covered by a collective bargaining agreement, employees who are nonresident aliens and who receive no earned income from the employer that constitutes income from sources within the United States, or any other employees described in § 410(b)(3) are not considered to be long-term part-time employees for CODA eligibility purposes.

2.11 Updating Dollar Limit for Mandatory Distributions

For an employee that terminates service with a value of the employee's vested account balance derived from employer and employee contributions is in excess of \$1,000 but not greater than \$5,000, and if the participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly, the requirements of section 401(a)(31)(B) of the Code relating to automatic distributions as a direct rollover to an individual retirement plan. The outer limit in the aforementioned provision is increased from \$5,000 to \$7,000 effective for distributions made after 12/31/23.

2.12 Repayment of Qualified Birth or Adoption Distribution Limited To 3 Years

A Participant who received one or more Qualified Birth or Adoption Distributions under the Plan is entitled to recontribute the distributions (not to exceed the amount of the distributions) at any time during the 3-year period beginning on the day after the date on which such distribution was received, in the case of distributions made after December 29, 2022, or at any time after such distribution and before January 1, 2026, in the case of distributions made on or before December 22, 2022, if the Participant is eligible to make a rollover contribution to the Plan at the time of recontribution. A Participant who makes a recontribution to the Plan will be treated as having received the distributions in an eligible rollover distribution and as having transferred the amount to the Plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

2.13 Employer May Rely on Employee Certifying that Deemed Hardship Distribution Conditions are Met

Effective for plan years beginning after the date of enactment of the Act, an employer may rely on the certification of an employee seeking a hardship distribution. The statutory change provides that an employer can, but is not required to, rely on a participant's written representation (including by electronic media) that (1) a distribution is on account of an immediate and heavy financial need of a type defined in the Plan; (2) the distribution is not in excess of the amount required to satisfy the financial need identified; and (3) the Participant has insufficient cash or other liquid assets reasonably available to satisfy the need. If these conditions are met and the employer does not have actual knowledge that is contrary to these three representations, an employer can rely on the participant's certification and grant a hardship distribution.

2.14 Elective Deferrals Generally Limited to Regular Contribution Limit

IRC section 414(v)(7)(A) sets forth the requirement that catch-up contributions made by certain catch-up eligible participants must be designated Roth contributions. This requirement specifically applies to a catch-up eligible participant whose wages as defined in section 3121(a) (wages for purposes of the Federal Insurance Contributions Act, or FICA) for the preceding calendar year from the employer sponsoring the plan exceeded \$145,000 (cost-of living adjustment is \$150,000 for 2025).

For taxable years beginning after December 31, 2024, the wage limitation is adjusted for changes in the cost of living. Initially effective for taxable years beginning after December 31, 2023, the first two taxable years will be regarded as an administrative transition period. Until taxable years beginning after December 31, 2025, a plan will be treated as satisfying the Roth catch-up requirements even if applicable contributions are not designated as Roth contributions, and even if a plan does not provide for designated Roth contributions.

2.15 Expanding Automatic Enrollment in Retirement Plans

IRC section 414A was added to the Code to provide that certain newly established employer plans with a Cash or Deferred Arrangement must automatically enroll employees. New 401(k) plans must automatically enroll participants with at least a 3% contribution rate. The plan must include an auto-escalation feature that increases the contribution rate by 1% per year to at least 10%, but not more than 15%. The salary reduction agreement must be an eligible automatic contribution arrangement, as defined in section 414(w)(3) that provides permissible withdrawals and satisfies certain additional requirements involving default elective contributions and default investments. These amendments apply to plan years beginning after December 31, 2024. Plans that do not have to comply with this section include plans established before December 29, 2022; employers with 10 or fewer employees; employers in business for less than 3 years; governmental plans; and church plans.

ADOPTION OF PLAN AMENDMENT

The Mass Submitter has adopted this Good Faith Amendment on behalf of all adopting employers as of September 1, 2026, to be effective based on the legislation provisions under the applicable Act, referenced above. The adopting employer with respect to the Plan document requires no further action, unless the defaults as described in Section 2, A and B of this Good Faith Amendment are different from those actually adopted by the employer in operation.

The employer's Plan is amended as of the last day of the first plan year beginning on or after January 1, 2026.

Client ID:	Rep ID:	Alt Branch:
ADOPTION AGREEMENT ADDENDUM		
OPTIONAL PROVISIONS OF THE SECURE 2.0 ACT		
The employer must execute this Addendum to the SECURE 2.0 Act Good Faith Amendment Addendum applicable to optional provisions only if an election is made that is not consistent with the default provided in each case. If a non-default selection is made, the employer must sign and date in the space indicated below and must also provide the effective date that applied to each provision. Otherwise, all default elections will apply.		
<i>From the following list, please indicate which options were adopted in practice.</i>		
☐	Emergency Expense Withdrawal (Generally \$1,000 per year) <i>Default – Not permitted</i>	Effective date:
☐	Emergency Savings Linked Account under Designated Roth (\$2,500) <i>Default – Not permitted</i>	Effective Date:
☐	Domestic Abuse Distributions <i>Default – Not permitted</i>	Effective Date:
☐	Terminal Illness Distributions <i>Default – Not permitted</i>	Effective Date:
☐	Treatment of Employer Contributions as a Roth Contributions <i>Default – Not permitted</i>	Effective Date:
☐	Add Qualified Student Loan Payment option <i>Default – Not permitted</i>	Effective Date:
☐	For individuals age 60, 61, 62, and 63, the employer plan catch-up limit (\$7,500 for 2023) is increased to the greater of \$10,000 or 50% more than the regular catch-up amount. In addition, this amount will be indexed for inflation after 2025. <i>Default – Not permitted</i>	Effective Date:
☐	Qualified Disaster Distributions – up to \$22,000 can be distributed penalty free. Taxed over 3 years and may be repaid over a 3-year period. <i>Default – Not permitted</i>	Effective Date:
☐	Qualified Disaster Loans – up to 100% not to exceed \$100,000 can be borrowed, plus a one-year extension for repayment of the loan. <i>Default – Not permitted</i>	Effective Date:
*Notwithstanding the selections made above, your TPA or recordkeeper will inform you as to when implementation of the provision can be made to the Plan.		
AUTHORIZED SIGNATURE		
The signature below acknowledges reliance upon personal advice regarding the completion of this Adoption Agreement Addendum and the legal and tax implications of amending this Plan. Failure to properly complete this Adoption Agreement Addendum may result in disqualification of the Plan. The signer has received a copy of the Good Faith Amendment and the Adoption Agreement Addendum that affirmatively amends the employer's Adoption Agreement.		
Plan Name:		
A signature is necessary only if an election is made that is not consistent with the default provided in each case.		
Name of Authorized Signer:		Title:
Signature: X		Date: