

SECURE ACT 2.0: PROVISIONS OF RELEVANCE FOR PUERTO RICO RETIREMENT PLANS

On December 29, 2022, President Biden signed into law the most substantial piece of retirement legislation in several years, the SECURE 2.0 Act of 2022 (the “Act”), which forms part of the Consolidated Appropriations Act of 2023. The Act’s main goal is to increase American retirement readiness and, while many of its 90-plus provisions will not apply to Puerto Rico-only tax qualified retirement plans, some will to the extent they amend the *Employee Retirement Income Security Act of 1974 (ERISA)*. Other Act provisions will also impact dual-qualified retirement plans. Although further guidance is yet to be issued, below we summarize some of the Act’s numerous mandates and options that will or may impact Puerto Rico retirement plans, effective over the next few years:

MANDATORY

1. **Increase in Age to Commence Required Minimum Distributions (RMDs) – Effective for distributions required to be made after December 31, 2022, with respect to individuals who attain age 72 after such date:**
 - The age to begin RMDs for individuals who attain age 72 after December 31, 2022 and age 73 before January 1, 2033 will be age 73.
 - The age to begin RMDs for individuals who attain age 74 after December 31, 2032 will be age 75.
 - *Required for dual qualified plans and applicable to Puerto Rico-only qualified plans that have incorporated RMDs as a matter of plan design.*
2. **Coverage for Long Term Part Time Employees – Effective for plan years beginning after December 31, 2024:**
 - Employers must permit part-time employees who have attained age 21 (excluding employees covered by a collective bargaining agreement and nonresident aliens who receive no earned income) to make elective deferrals into a plan shortly after the earlier of (i) completing 1-year of service (i.e., 1,000 or more hours of service) in a 12-month period; or (b) completing at least 500 hours of service in each of 2-consecutive-years.
 - Employers are not required to provide employer matching or nonelective contributions on behalf of part-time employees eligible under this requirement.
 - 12-month periods beginning before January 1, 2023 shall not be taken into account for eligibility purposes.
 - Service for vesting purposes is disregarded for years prior to January 1, 2023.
 - *Required for both dual-qualified plans and Puerto Rico-only qualified plans.*
3. **Lost and Found Database – Various effective dates:**
 - No later than December 29, 2024, the United States Secretary of Labor (“Secretary”) must establish an online searchable database for individuals to search for information to locate the administrator of any plan in which the individual was a participant or beneficiary. The database will also allow the Secretary to assist in locating the plan and make necessary changes to plan administrator contact information.
 - Plan administrators must report to the Secretary certain information regarding their plan, changes in plan status (e.g., changes in the name of the plan, the name or address of the plan administrator, termination of the plan or its merger, consolidation, or division), and former and current participants with a deferred vested benefit, as specified by the Secretary, effective for plan years beginning after December 31, 2023.
 - *Required for both dual-qualified plans and Puerto Rico-only qualified defined contribution and defined benefit plans.*
4. **Paper Statements – Effective for plan years beginning after December 31, 2025:**
 - Defined contributions plans will be required to provide to participants 1 paper statement per year.
 - Defined benefit plans will be required to provide to participants 1 paper statement every 3 years.
 - No paper statement is required to be delivered to participants who have affirmatively elected to receive all plan disclosures in electronic form when such disclosure is done in compliance with applicable regulation.
 - *Required for both dual-qualified plans and Puerto Rico-only qualified plans.*

OTHER RELEVANT PROVISIONS

5. **Small Benefit Distribution – Effective for distributions made after December 31, 2023:**
 - Increases the automatic cash-out minimum threshold from \$5,000 to \$7,000.
 - *Applicable to both dual-qualified plans and Puerto Rico-only qualified plans.*

6. **Expansion to the Employee Plans Compliance Resolution System (EPCRS) – Effective December 29, 2022:**
 - The EPCRS is expanded to allow more types of inadvertent operational errors and document failures to be self-corrected, including errors involving plan loans.
 - Pursuant to the Act, the self-correction period is indefinite, provided that errors are corrected (i) before they are identified by the IRS and (ii) within a reasonable period of time after discovered
 - Further guidance is expected no later than December 29, 2024.
 - [*Applicable to dual-qualified plan; used as analogous correction for Puerto Rico-only qualified plans.*](#)

7. **Recovery of Overpayments – Effective as of December 29, 2022:**
 - Grants plan fiduciaries discretion to not to seek recovery of an inadvertent overpayment from a plan participant or beneficiary. Also sets standards if they do seek such recovery, for instance:
 - i. a fiduciary may not threaten litigation as a means to recoup the overpayment, or engage a collection agency, except under limited conditions;
 - ii. recoupment of past overpayments to a participant may not be sought from beneficiaries; and
 - iii. recoupment may not be sought if the first overpayment occurred more than 3 years before the participant or beneficiary is first notified, unless there is fraud of misrepresentation by the participant.
 - The Act also allows a participant or beneficiary to contests the recoupment under the plan’s benefit claims procedures.
 - [*Applicable to both dual-qualified plans and Puerto Rico-only qualified plans.*](#)

8. **Small Immediate Financial Incentives to Participate – Effective for plan years beginning after December 29, 2022:**
 - Permits employers to offer low-cost financial incentives (such as gift cards) to employees to encourage participation in a 401(k) plan.
 - Provides a prohibited transaction exemption under ERISA.
 - [*Applicable to both dual-qualified plans and Puerto Rico-only qualified plans.*](#)

9. **Notice to Unenrolled Participants and Disclosure Requirements – Effective for plan years beginning after December 31, 2022:**
 - Eliminates unnecessary defined contribution plans disclosure requirements related to unenrolled participants provided the participant is provided with:
 - i. An annual notice of eligibility to participate during the annual enrollment period and any applicable election deadlines under the plan; and
 - ii. Any document requested by the participant to which the individual would be otherwise entitled.
 - For purposes of this amendment, an “unenrolled participant” shall mean an employee who (i) is eligible to participate in the plan; (ii) has been furnished the Summary Plan Description pursuant to ERISA and any other legally required eligibility notices; (iii) is not participating in the plan; and (iv) satisfies any other criteria determined by the Secretary.
 - [*Applicable to both dual-qualified plans and Puerto Rico-only qualified plans.*](#)

10. **Matching Contributions for Student Loan Repayments – Effective for contributions made for plan years beginning after December 31, 2023:**
 - Permits employers to make matching contributions to an employee’s 401(k) plan in an amount equivalent to the employee’s qualified student loan repayments.
 - Employers may rely on an employee’s certification that payments have been made on qualified student loans to pay for qualified higher education expenses.
 - [*Applicable to dual-qualified plans.*](#)

Employers and administrators of Puerto Rico retirement plans should be mindful of the Act amendments and their respective effective dates to timely incorporate these new provisions to their plans and provide appropriate participant communications, as applicable. Plan administrators should also be on the lookout for future guidance on the interpretation and implementation of the Act provisions to ensure compliance.

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