RETIREMENT PLANS THAT ARE RIGHT FOR YOUR BUSINESS

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I. 401(K) PLANS

A. As of 2026, there are approximately 750,000 401(k) plans in the U.S. covering over 75 million active participants and managing more than $11 trillion in assets, reflecting continued growth in defined contribution retirement savings.

B. A 401(k) is a feature of a qualified profit-sharing plan that allows employees to contribute a portion of their wages to individual accounts.

C. Elective salary deferrals are excluded from the employee's taxable income (except for designated Roth deferrals).

II. 401(K) DESIGN OPTIONS

A. Roth 401(k)

1. A Roth 401(k) allows employees to make after-tax contributions, offering tax-free qualified withdrawals of both contributions and earnings in retirement.

2. Withdrawals in retirement are 100% tax-free, provided the participant is at least 59½ and has held the account for at least five years.

3. Unlike Roth IRAs, anyone can contribute to a Roth 401(k) regardless of income level.

4. Under the SECURE 2.0 Act, required minimum distributions (RMDs) are no longer required for Roth 401(k)s.

5. SECURE 2.0 Act Enhancements to Roth 401(k).

6. Employer matching and nonelective contributions have traditionally been deposited into a traditional 401(k) account and are taxable upon withdrawal. However, under SECURE 2.0 Act section 604, plans may now permit participants to elect to receive employer matching and nonelective contributions on a Roth basis. Traditional pre-tax treatment remains the default unless the plan is amended to offer this Roth option. Roth employer contributions are taxable when contributed, but qualify for tax-free distribution if the Roth requirements are met. (SECURE 2.0 Act section 604; IRC section 402A.)

7. In-Plan Roth Conversion.

a. An in-plan Roth conversion (or rollover) allows a participant to move pre-tax or after-tax 401(k) funds into a Roth account within the same plan, creating a taxable event now for tax-free growth and withdrawals later.

b. Converted pre-tax money is treated as ordinary income in the year of conversion.

c. A participant can only convert funds in which he or she is fully vested, or amounts that are otherwise permitted to be distributed (e.g., age 59½, separation from service).

d. The five-year clock for qualified Roth distributions begins January 1 of the first year any Roth contribution is made to the plan, not the date of the conversion. Converted amounts withdrawn within five years and before age 59½ may still trigger the 10% early distribution penalty on taxable portions. (IRC section 402A(d)(2)(B); Treas. Reg. section 1.402A-1, Q&A-4.)

e. The employer's plan document must specifically permit in-plan Roth conversions.

B. Safe Harbor 401(k)

1. 401(k) plans are subject to annual discrimination tests known as the Actual Deferral Percentage (ADP) Test and the Actual Contribution Percentage (ACP) Test.

2. The ADP Test ensures highly compensated employees (HCEs) do not contribute at a significantly higher rate than non-highly compensated employees (NHCEs). It compares the average employee salary deferrals of both groups, with failure leading to required refunds to HCEs.

3. The ACP Test works the same way but compares matching contributions received by the HCEs and NHCEs.

4. Safe Harbor 401(k) plans are generally exempt from ADP testing if specific employer matching or nonelective contributions are made.

5. Safe Harbor Design Options

a. 3% Nonelective Contribution: The employer contributes at least 3% of compensation to all eligible employees, regardless of whether they contribute their own money.

b. Basic Match: The employer matches 100% of the first 3% of compensation deferred, plus 50% of the next 2% (totaling 4% if the employee contributes 5%).

c. Enhanced Match: A more generous formula that equals or exceeds the basic match (e.g., a 100% match on the first 4% of deferrals).

d. Qualified Automatic Contribution Arrangement (QACA): Combines safe harbor with automatic enrollment, allowing for a 2-year cliff vesting schedule and a lower matching formula (100% on first 1% + 50% on next 5%).

e. <u>Deadline to Adopt</u>: To adopt a 3% nonelective safe harbor, it can often be added mid-year, but most safe harbor designs require advance notice and adoption prior to the plan year.

f. <u>Top-Heavy Exemption</u>: Plans with only safe harbor contributions are generally exempt from top-heavy testing.

C. Qualified Automatic Contribution Arrangements

1. Default Enrollment & Escalation

a. **Initial Default Rate:** Minimum of 3% of compensation, maximum of 10%. A Qualified Automatic Contribution Arrangement (QACA) is a safe harbor 401(k) design that requires automatic enrollment starting at 3% to 10% of pay.

b. **Automatic Escalation:** Must increase by 1% annually until it reaches at least 6% (maximum of 10% or 15% depending on interpretation).

c. **Alternative:** Set initial default at 6% or higher to avoid yearly increases.

2. Employer Contribution Options (Choose One)

a. QACA Match: 100% match on the first 1% of deferred compensation, plus 50% match on the next 5% of deferred compensation (3.5% total).

b. QACA Enhanced Match: A more generous formula than the basic match, still subject to specific limitations.

c. QACA Nonelective: A minimum 3% contribution of compensation to all eligible employees, regardless of whether they contribute.

3. Must include a qualified default investment alternative (QDIA) for employees who do not make an election.

4. QACA plans are generally exempt from annual ADP/ACP non-discrimination testing and top-heavy testing.

5. SECURE 2.0:

a. SECURE 2.0 Act requires most new 401(k) and 403(b) plans established after December 29, 2022, to implement an Eligible Automatic Contribution Arrangement (EACA) starting in 2025.

b. Initial default contribution must be between 3% and 10% of compensation, increasing by 1% annually to at least 10%, but not exceeding 15%.

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c. Plans created before December 29, 2022, small businesses (10 or fewer employees), new businesses (less than three years old), church plans, and governmental plans are exempt.

d. Employees have a 90-day window to withdraw automatically contributed funds without penalties.

6. SECURE 2.0 section 127 allows defined contribution plans to offer pension-linked emergency savings accounts (PLESAs) to non-highly compensated employees, effective for plan years beginning after December 31, 2023.

D. SECURE 2.0 Emergency Savings Accounts (Pension-Linked Emergency Savings Accounts)

1. Contributions are Roth (after-tax) and capped at $2,500 (indexed for inflation). Participants may make up to four penalty-free withdrawals per year.

2. Employer matching contributions on PLESA deferrals must be deposited into the participant's main retirement account, not the emergency savings account.

E. Student Loan Payment Matching Contributions

1. Under SECURE 2.0 section 110, employers may treat qualified student loan payments (QSLPs) as elective deferrals for purposes of matching contributions, effective for plan years beginning after December 31, 2023.

2. This provision helps employees burdened by student debt to still receive employer matching contributions even if they cannot afford to make traditional 401(k) deferrals.

3. Employees must certify their student loan payments annually, and the plan document must be amended to permit this feature. IRS Notice 2024-63 provides guidance on implementation.

F. Long-Term Part-Time Employee Eligibility

1. The original SECURE Act required 401(k) plans to allow long-term part-time employees (those with at least 500 hours of service in three consecutive years) to make elective deferrals, effective for plan years beginning after December 31, 2020 (with eligibility service counted from 2021).

2. SECURE 2.0 section 125 accelerated this requirement by reducing the service period from three consecutive years to two consecutive years, effective for plan years beginning after December 31, 2024.

3. SECURE 2.0 also extended the long-term part-time employee rules to 403(b) plans.

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G. De Minimis Financial Incentives

1. SECURE 2.0 section 113 permits employers to offer de minimis financial incentives (other than matching contributions) to encourage employee participation in 401(k) and 403(b) plans, effective for plan years beginning after December 29, 2022.

2. Examples may include gift cards or modest cash payments for enrolling in the plan. The incentive must be de minimis in value and cannot be funded from plan assets.

H. A Multiple Employer Plan (MEP) is a single qualified retirement plan maintained by two or more unrelated employers. MEPs offer economies of scale and reduced administrative burdens, but traditionally required a common nexus (such as industry association membership) among participating employers.

III. POOLED EMPLOYER PLANS (PEPs) AND MULTIPLE EMPLOYER PLANS (MEPs)

A. The SECURE Act of 2019 created Pooled Employer Plans (PEPs), effective for plan years beginning after December 31, 2020, eliminating the common nexus requirement and allowing unrelated employers to join together in a single plan administered by a Pooled Plan Provider (PPP).

B. The Pooled Plan Provider (PPP) is a named fiduciary and plan administrator responsible for performing administrative duties and ensuring compliance. The PPP must register with the DOL and IRS.

C. "One Bad Apple" Rule Eliminated. Prior to the SECURE Act, a compliance failure by one employer in a MEP could disqualify the entire plan. The SECURE Act eliminated this rule for PEPs, allowing the non-compliant employer to be removed without jeopardizing the plan's qualified status for other participants.

D. PEPs are particularly attractive to small businesses that may lack the resources to maintain an individual plan, offering lower costs, professional administration, and reduced fiduciary burden.

IV. DEFINED BENEFIT PLANS

A. A defined benefit (DB) plan is an employer-sponsored retirement plan, commonly known as a traditional pension, which promises a specific, guaranteed monthly income upon retirement. Benefits are typically calculated based on a formula considering salary history and years of service, rather than investment performance.

B. Unlike a 401(k) plan (a defined contribution plan), where there is no guarantee of the value at retirement, a defined benefit plan requires sufficient funds in the plan at the time of participants' retirement.

C. The employer, not the employee, is responsible for managing the plan's investment risk and ensuring enough funds are available to pay the promised benefits.

D. Defined benefit plans have disadvantages like high costs and complexity for employers, lack of investment control and portability for employees, and financial risk if the employer underfunds the plan, often leading to less flexibility and potential benefit reduction if the company faces financial trouble, making them less popular than defined contribution plans such as a 401(k) Plan.

E. A cash balance plan is a defined benefit plan that functions like a defined contribution plan (such as a 401(k)) by offering individual, hypothetical account balances. Employers guarantee a specific benefit (pay credits + interest credits) and bear all investment risk, making it popular for accelerating retirement savings and reducing taxes.

F. PBGC Premiums and Plan Termination. Defined benefit plans are generally covered by the Pension Benefit Guaranty Corporation (PBGC), which insures participant benefits in the event of plan underfunding or employer insolvency. Employers must pay annual PBGC premiums, including a flat-rate premium per participant and a variable-rate premium based on the plan's unfunded vested benefits. For 2026, the flat-rate premium is $101 per participant, and the variable-rate premium cap is $686 per participant.

V. COMBINING - COMBO PLANS

A. A defined contribution plan can include what is known as a new comparability formula or cross-testing.

B. A defined contribution plan defines the amount that will be contributed currently with no guarantee as to the amount of the benefit at the time of retirement. A defined benefit plan specifies the benefit at retirement without a predetermined annual contribution.

C. The underlying principle determining the funding of a defined benefit plan is the time value of money. For example, a participant who is age 60 needs to have a larger contribution made to a retirement plan today to have that amount grow to $100 at retirement compared to the contribution required for a participant who is age 20 to have his or her benefit grow to $100 at retirement.

D. Each year, a defined benefit plan is required to have an actuary calculate the required contribution by projecting the retirement benefit to be funded.

E. In simple terms, cross-testing works by looking at the contribution made to each participant currently and demonstrating that although each participant may receive a different contribution percentage compared to the other participants, the amount received is projected to be the same benefit at retirement.

F. Key technical requirements must be satisfied to demonstrate that the cross-tested plan does not discriminate in favor of HCEs.

G. Cross-tested plans must also satisfy one of two minimum contribution requirements, in addition to the technical requirements described above:

1. A minimum 5% allocation rate to each non-highly compensated employee (NHCE); or

2. A minimum allocation rate to the NHCEs equal to 1/3 of the highest allocation rate for any highly compensated employee (HCE).

H. What it may look like:

NAME	AGE	PLAN COMP.	ASSUMED DEFERRALS	3% SAFE HARBOR	PROFIT SHARING	CASH BALANCE	TOTAL AMOUNT
Owner	50	$360,000.00	$32,500.00	$0.00	$20,282.00	$200,000.00	$252,984.00
NHCE #1	37	$52,300.00	$0.00	$1,569.00	$2,144.30	$1,830.50	$5,543.80
NHCE #2	29	$18,800.00	$0.00	$564.00	$770.80	$658.00	$1,992.80
NHCE #3	34	$28,600.00	$0.00	$858.00	$2,030.60	$1,001.00	$3,031.60
GRAND TOTAL							$263,552.20

96% of the total contributions go to the owner.

VI. RETIREMENT PLAN DOLLAR LIMITATIONS

A. The elective deferral limits under IRC §402(g) for 401(k) plans are $24,500 in 2026, with cost-of-living increases in $500 multiples.

B. The dollar limit under IRC §415(c)(1)(A) for annual additions with respect to defined contribution plans is the lesser of $72,000 or 100% of compensation for 2026, with cost-of-living increases in $1,000 multiples.

C. The compensation dollar limit under IRC §401(a)(17) is $360,000 for 2026, with cost-of-living increases in $5,000 multiples.

D. The deductible contribution under IRC §404(a)(3) is 25% of aggregated participant compensation.

E. Deferrals for 401(k) plans are separately deductible with regard to the 25% limit and do not count toward the 25% limit applicable to other employer contributions (e.g., matching contributions, non-elective contributions).

F. Participant compensation used to calculate the 25% limit under IRC §404(a)(3) is based on IRC §415 compensation, which means it is "grossed up" for elective deferrals made by participants under 401(k) plans, cafeteria plans, etc.

G. Catch-Up Contributions for Individuals Age 50 and Older: Ages 50–59 and 64+: an additional $8,000. Ages 60–63: an additional $11,250.

H. Roth Catch-Up Mandate for High Earners: For participants age 50 and older with prior-year wages exceeding $150,000, enrolled in a 401(k), 403(b), or 457(b) plan, all catch-up contributions must be made on a Roth basis. This requirement is effective for taxable years beginning after December 31, 2025. (SECURE 2.0 section 603; IRC section 402A(a); IRS Notice 2024-02.)

I. Starter 401(k) Plans

1. SECURE 2.0 section 121 creates a new "starter 401(k)" or "safe harbor 403(b)" plan option for employers who do not sponsor any other retirement plan, effective for plan years beginning after December 31, 2023.

2. All employees must be eligible to participate (with limited exclusions), and the plan must include automatic enrollment at a default deferral rate between 3% and 15% of compensation.

3. Employee contributions are limited to the IRA limit (plus catch-up contributions for eligible employees). Employer contributions are not permitted.

4. Starter plans are exempt from ADP/ACP nondiscrimination testing and top-heavy testing, making them an attractive low-cost entry point for small businesses.

VII. THE NEED FOR LOANS AND IN-SERVICE DISTRIBUTIONS

A. Provided a retirement plan allows for loans, a participant can avoid being taxed on the receipt of funds as a distribution if a loan is made pursuant to an enforceable agreement, and the agreement meets certain requirements with respect to the term of the loan, the repayment schedule, and the dollar amount loaned.

B. The specific requirements for a loan are as follows:

1. A loan must be evidenced by a legally enforceable agreement, which may be composed of more than one document.

2. Generally, the term of the loan must be no longer than five years. An exception to the five-year rule exists for principal residence loans. A principal residence loan is used to acquire a dwelling unit that is to be, within a reasonable time, the principal residence of the participant.

3. The loan must provide for level amortization over the term of the loan with payments not less frequently than quarterly.

4. The loan must bear a reasonable rate of interest.

5. Generally, the amount of the loan (when added to the outstanding balance of all other loans, whenever made, from all plans of the employer) may not exceed the lesser of (i) $50,000 (reduced by the excess of the highest outstanding balance of plan loans during the one-year period ending on the day before the date when the loan is made over the outstanding balance of plan loans on the date when the loan is made), or (ii) one-half of the present value of the employee's nonforfeitable accrued benefit under such plan. A plan may provide that a minimum

loan amount of up to $10,000 may be borrowed, even if it is more than one-half of the present value of the employee's nonforfeitable accrued benefit.

C. In-Service Distributions

1. Pre-tax contributions to 401(k) plans may not be distributed prior to the occurrence of certain distributable events: severance of employment, death, disability, attainment of age 59½, hardship, or termination of the plan.

2. In-service distributions may be made from a qualified profit-sharing plan to participants who have not separated from service upon attainment of a stated age (usually age 59½) and for emergency purposes.

3. Even if a plan does allow for in-service distributions prior to age 59½, the distribution may be subject to a 10% premature distribution penalty.

a. Effective for distributions after December 31, 2023, participants may take one penalty-free emergency distribution of up to $1,000 per calendar year for unforeseeable or immediate financial needs relating to personal or family emergency expenses.

4. SECURE 2.0 Emergency Distributions (Section 115)

a. The participant may repay the distribution within three years. If not repaid, no additional emergency distribution may be taken until the earlier of (i) repayment, or (ii) three years after the prior distribution.

5. Domestic Abuse Victim Distributions (SECURE 2.0 Section 314). Effective for distributions after December 31, 2023, a participant who certifies as a victim of domestic abuse may take a penalty-free distribution of the lesser of $10,000 (indexed) or 50% of the participant's vested account balance. The distribution may be repaid within three years.

6. Terminal Illness Distributions (SECURE 2.0 Section 326). Effective for distributions after December 29, 2022, participants who are terminally ill (certified by a physician as having a condition reasonably expected to result in death within 84 months) may take penalty-free distributions from their retirement accounts.

VIII. <u>COMMON PROBLEM AREAS</u>

A. Depositing Contributions

1. The making of late deposits of contributions (or forgetting to make them) is an issue for both salary deferral and employer contributions.

2. The U.S. Department of Labor (DOL) rules emphasize that deposits should be made as soon as administratively feasible, not just by the 15th-day deadline.

3. Employers with fewer than 100 participants are considered to have complied if they deposit contributions within 7 business days of withholding.

4. Late deposits are considered prohibited transactions, which may require filing with the DOL's Voluntary Fiduciary Correction Program (VFCP) and paying excise taxes to the IRS.

B. Top-Heavy Violations

1. A plan is top-heavy with respect to a plan year if the aggregate account balances (or the present value of the cumulative benefits) for the key employees exceed 60% of the aggregate account balances (or the present value of the cumulative accrued benefits) of all employees.

2. A common problem found in a top-heavy defined contribution plan is that the required top-heavy minimum contribution is not provided to the non-key participating employees. The employer must provide each non-key employee participant with a contribution equal to 3% of his or her annual compensation, or such lower percentage as is provided to the key employee who receives the highest percentage of compensation for the plan year.

3. Another problem occurs in top-heavy 401(k) plans. Elective contributions under a 401(k) plan on behalf of key employees are taken into account in determining the top-heavy minimum contribution. However, elective contributions on behalf of employees other than key employees may not be treated as employer contributions for purposes of satisfying the top-heavy contribution. (Treas. Reg. section 1.416-1, M-20.) Many employers are not aware of their requirement to make a top-heavy minimum contribution when only elective deferrals are made to a plan.

C. Loans - The most common problems relate to the loans not being repaid within five years, loan payments not being made quarterly, and the plan not containing language that allows for plan loans.

D. Others

1. Inadequate documentation from the employee that a hardship or emergency exists for hardship and emergency distributions.

2. Failing to follow the terms of the plan.

3. Cybersecurity failures and data breaches affecting participant accounts and personal information.

4. Failing to properly handle forfeitures. Recent IRS guidance (proposed regulations published in 2024) confirms that plan forfeitures must be used within 12 months after the plan year in which the forfeiture occurred, either to pay plan administrative expenses, reduce employer contributions, or provide additional allocations to participants.

IX. WE MADE A MISTAKE—WHAT DO WE DO?

A. The Employee Plans Compliance Resolution System (EPCRS) permits plan sponsors to correct these failures and thereby continue to provide their employees with retirement benefits on a tax-favored basis.

B. Key terminology used within the Revenue Procedure includes the Self-Correction Program (SCP), the Voluntary Correction Program (VCP), and the Audit Closing Agreement Program (Audit CAP).

C. Under SCP, a plan sponsor that has established compliance practices and procedures may, at any time without paying any fee or sanction, correct insignificant operational failures of a qualified plan, a 403(b), a SEP, or a SIMPLE IRA plan, provided the SEP or the SIMPLE IRA is established and maintained under a document approved by the Internal Revenue Service. SECURE 2.0 section 305 significantly expanded SCP to permit self-correction of most eligible inadvertent failures, whether significant or insignificant, and removed the prior time limitation for correcting significant failures, provided correction occurs within a reasonable period after discovery and the failure was not first identified by the IRS (i.e., the plan is not under audit). (SECURE 2.0 section 305; Rev. Proc. 2021-30 as modified; Rev. Proc. 2024-15.)

D. VCP provides that a plan sponsor, at any time before audit, may pay a limited fee and receive the Internal Revenue Service's approval for correction of a qualified plan, 403(b) plan, SEP, or SIMPLE IRA plan. Under VCP, there are special procedures for anonymous submissions and group submissions.

E. Audit CAP occurs when a failure (other than a failure corrected through SCP or VCP) is identified on audit. The plan sponsor may correct the failure and pay a sanction. The sanction imposed will bear a reasonable relationship to the nature, extent, and severity of the failure, taking into account the extent to which correction occurred before audit.

F. IRS User Fee Reductions. SECURE 2.0 section 350 requires the IRS to ensure that the user fee for VCP submissions by employers with 100 or fewer employees does not exceed $1,500 (indexed for inflation after 2024). This reduced fee encourages small employers to utilize the correction program.

G. Overpayment Recovery. SECURE 2.0 section 301 provides relief for plans seeking to recover overpayments made to participants. Plans may (but are not required to) seek recoupment, and if they do, certain limitations apply (e.g., recovery cannot exceed the original overpayment amount, and participants cannot be charged interest). Fiduciaries will not be treated as breaching their duties solely for failing to pursue recovery of inadvertent overpayments.

X. STATE-MANDATED RETIREMENT PROGRAMS

A. As of early 2026, 17 states have active, mandatory state-sponsored retirement programs, with more than 20 states in total having enacted legislation to require private-sector employers to offer retirement plans.

B. These programs are designed to cover employees without access to employer-sponsored plans, often forcing employers to choose between the state plan or setting up a private 401(k).

C. The state of Michigan is actively considering a mandated state-facilitated retirement program, with legislation (HB 5336 and formerly HB 5461) introduced in late 2025 to create the "Michigan Secure Retirement Savings Program".

D. This plan would require employers with 5 or more employees who do not offer a retirement plan to automatically enroll employees into a state-administered IRA via payroll deductions, allowing employees to opt-out.

E. Small Business Retirement Plan Tax Credits

F. MiSaves Program. As of 2026, Michigan is developing the "MiSaves" program (or Michigan Secure Retirement Savings Program) with phased implementation expected to begin in 2027 for larger employers. Employers would be required to either offer a qualified retirement plan or facilitate employee participation in the state-administered program.

1. SECURE 2.0 significantly enhanced the IRC section 45E small employer pension plan startup credit, increasing the credit to cover 100% of administrative costs (up from 50%) for employers with up to 50 employees, with a maximum credit of $5,000 per year for the first three years.

2. New Employer Contribution Credit. SECURE 2.0 section 102 created a new credit for small employers (up to 100 employees) making employer contributions to a retirement plan. The credit equals a percentage of employer contributions (excluding elective deferrals), up to $1,000 per employee: 100% in years 1-2, 75% in year 3, 50% in year 4, and 25% in year 5.

3. Auto-Enrollment Credit. Employers receive an additional $500 credit per year for up to three years for including an automatic enrollment feature in a new or existing plan.

4. Military Spouse Participation Credit. SECURE 2.0 section 112 created a tax credit for small employers (up to 100 employees) that make military spouses eligible to participate in their defined contribution plan within two months of hire, with immediate 100% vesting. The credit is $200 per military spouse for three years, plus a $300 credit for employer contributions made on behalf of the military spouse.

XI. SOCIALLY RESPONSIBLE INVESTING (SRI)

A. Socially Responsible Investing (SRI) is an investment strategy that aims to generate financial returns while supporting positive environmental, social, and governance (ESG) outcomes.

B. It involves investing in companies with strong sustainability practices, ethical labor, and transparent management, often excluding industries like tobacco or weapons.

C. Impact Investing is a proactive subset of SRI focused on generating specific, beneficial social or environmental effects, such as funding renewable energy or affordable housing. Under the DOL 2022 final ESG rule, ERISA fiduciaries may consider ESG factors when such factors are relevant to the risk-return analysis of an investment. (29 CFR section 2550.404a-1; 87 Fed. Reg. 73822 (Dec. 1, 2022)).

D. Fiduciary Responsibilities Under ERISA. ERISA imposes core fiduciary duties on those who manage retirement plans: (1) Prudence, acting with the care, skill, and diligence of a prudent person; (2) Loyalty, acting solely in the interest of plan participants and beneficiaries; (3) Diversification, diversifying plan investments to minimize the risk of large losses; and (4) Adherence to Plan Documents, following the terms of the plan documents to the extent consistent with ERISA. (ERISA section 404(a)(1)).

E. Increased RMD Starting Age: SECURE 2.0 section 107 increased the age for required minimum distributions from 72 to 73 (effective January 1, 2023) and will increase it to 75 (effective January 1, 2033).

XII. REQUIRED MINIMUM DISTRIBUTION (RMD) CHANGES

A. Reduced Excise Tax for RMD Failures: The excise tax for failure to take an RMD has been reduced from 50% to 25% of the shortfall, and further reduced to 10% if corrected in a timely manner. (SECURE 2.0 section 302.)

B. Roth Accounts Exempt from RMDs: As noted above, SECURE 2.0 eliminated RMDs for designated Roth accounts in employer-sponsored plans, effective for taxable years beginning after December 31, 2023. (SECURE 2.0 section 325.)

XIII. AUTOMATIC PORTABILITY

A. SECURE 2.0 section 120 permits automatic portability services, allowing small retirement account balances (under $7,000, as increased from $5,000 by SECURE 2.0) to be automatically rolled over to a participant's new employer's plan when they change jobs.

B. This provision is designed to reduce retirement plan "leakage" by keeping funds in tax-advantaged retirement accounts rather than being cashed out when employees change jobs.

C. Plans may utilize automatic portability providers to facilitate these transfers. The DOL has issued guidance establishing conditions under which these transactions satisfy ERISA's fiduciary requirements. (DOL Prohibited Transaction Exemption 2019-02.)

XIV. RETIREMENT PLAN CYBERSECURITY

A. In April 2021, the U.S. Department of Labor issued cybersecurity guidance for retirement plans, marking the first time the DOL addressed this issue directly. The guidance applies to ERISA-covered plans and their service providers.

B. Tips for Hiring a Service Provider. Plan sponsors should ask service providers about their cybersecurity practices, including information security standards, audit results, insurance coverage, and data breach response protocols.

C. Cybersecurity Program Best Practices. The DOL recommends that service providers maintain: (1) a formal, well-documented cybersecurity program; (2) annual risk assessments; (3) strong access controls and authentication; (4) encryption of sensitive data; (5) business continuity and disaster recovery procedures; and (6) regular cybersecurity awareness training.

D. Online Security Tips for Participants. Participants should be educated on: (1) using strong, unique passwords; (2) enabling multi-factor authentication; (3) monitoring account activity regularly; (4) avoiding phishing scams; and (5) keeping contact information current with the plan.

E. Fiduciary Responsibility for Cybersecurity. Plan fiduciaries have a duty to prudently select and monitor service providers, including their cybersecurity practices. Failure to address cybersecurity risks may constitute a breach of fiduciary duty under ERISA.