

Secure Act 2.0: What Puerto Rico Retirement Plan Sponsors and Administrators Should Know in Advance

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An Introduction to the SECURE Act 2.0

- Signed into Law on December 29, 2022 (Pub. L. No. 117-328)
- Intends to increase American retirement readiness
- Builds on the SECURE Act of 2019 (“SECURE Act”)
- Includes multiple provisions that affect a broad array of qualified retirement plans, and other retirement vehicles
- Incorporates multiple amendments to the United States Internal Revenue Code of 1986 (“US Code”) and the Employee Retirement Income Security Act of 1974 (“ERISA”)
- Does not amend the Puerto Rico Internal Revenue Code of 2011



Do you know about the SECURE Act 2.0?

YES

NO



Impact of Secure Act 2.0 on PR Tax Qualified Plans

- Mandatory ERISA amendments will impact Puerto Rico tax qualified plans (“PR-only”) and dual qualified plans
- Mandatory US Code amendments will impact dual qualified plans in PR
 - ✓ May impact PR-only plans that have adopted US Code requirements as a matter of plan design



**Do you have a PR-only tax qualified plan
or a dual qualified plan?**

PR-ONLY

DUAL QUALIFIED



Required Minimum Distribution (RMD)

- Minimum amount a participant or beneficiary must withdraw from a retirement plan account each year upon reaching a certain age established by law
- Applies to dual qualified plans and PR-only plans that have adopted US Code requirements as a matter of plan design
- Under SECURE Act, RMD rules were significantly changed
 - ✓ *e.g.*, RMD age increased from age 70½ to 72
- SECURE Act 2.0 increases again RMD age
- Regulated under US Code Section 401(a)(9)



Do you require RMDs under your plan?

YES

NO



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Increase in Age to Commence RMDs

- Individuals who turn age 72 after December 31, 2022 and age 73 before January 1, 2033 → age 73
- Individuals who turn age 74 after December 31, 2032 → 75
- **Required** for dual qualified plans and **applicable** to PR-only qualified plans that have incorporated RMDs as a matter of plan design
- **Effective:** distributions required to be made after December 31, 2022, with respect to individuals who attain age 72 after such date



Next Steps for Plan Sponsors

- Take a look to the plans; identify references to:

- RMD
- US Code Section 401(a)(9)
- Age 70½ or 70.5
- Age 72

Withdrawals after age 70½

If checked, starting on April 1st of the calendar year following the calendar year in which the Participant attains age 70½, distribution of the vested balance in the Participant's account, or the first installment of such distribution, shall be made or commenced at the Participant's election.

- Work together with plan recordkeepers to change administrative processes
- Review plan documents, disclosures and other participant communications to identify potential updates



**Do you exclude part-time employees
from your plan?**

YES

NO



Coverage for Long Term Part Time Employees

- Generally, the age and service requirements for eligibility to make elective deferrals into a plan is restricted under ERISA and the US Code to:
 - ✓ Age 21
 - ✓ 1 year of service (12-month period)
- Historically, plans could require employees to attain age 21 and work at least 1,000 hours in a year to become eligible to make elective deferrals
- Consequently, part time, seasonal or temporary employees generally never met the eligibility criteria
- SECURE Act amended the US Code to permit elective deferrals to those who worked at least 500 hours in 3 consecutive years, effective in 2021
- SECURE Act did not amend ERISA



SECURE Act 2.0

Coverage for Long Term Part Time Employees

- SECURE Act 2.0 amended ERISA Section 202(c)
- Plan sponsors must now permit employees who complete at least 500 hours of service in each of 2-consecutive-years to make elective deferrals into a plan
- No employer matching or nonelective contributions are required
- 12-month periods beginning before January 1, 2023 may be disregarded for eligibility purposes
- Service for vesting purposes is disregarded for years prior to January 1, 2023, but is counted thereafter
- **Required** for both dual-qualified plans and PR-only
- **Effective Date:** plan years beginning after December 31, 2024



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Coverage for Long Term Part Time Employees

Name	2021*	2022*	2023	2024	2025	Enters the plan on:
María	580	550	600	510	500	January 1, 2025
Enrique	0	550	400	600	480	N/A – must have 2 consecutive years
Rita	0	610	580	400	430	N/A – must have 2 consecutive years
Roberto	650	450	500	500	525	January 1, 2025
Josean	0	0	775	680	710	January 1, 2025

**Service prior to January 1, 2023 is disregarded (this example applies only to PR only qualified plans; for dual Qualified plans this rule could apply since 1/1/24 under the interplay of Secure Act 1.0 & Secure Act 2.0)*



Next Steps for Plan Sponsors

- Take a look to the plans; identify the following terms or definitions:
 - ✓ Employee
 - ✓ Eligible Employee and exclusions
 - ✓ Entry Date
 - ✓ Participation
- Track hours for part-time employees starting with plan years beginning in 2023 (2022 for dual qualified plan)
- Review plan documents, disclosures and other participant communications to identify potential updates



The Retirement Savings Lost and Found Database

- The Secretary of the United States Department of Labor (“US-DOL”), in consultation with the Secretary of the United States Department of Treasury must create a searchable online database
- The database shall:
 - ✓ Assist participants and beneficiaries to locate a plan administrator and get its contact information
 - ✓ Allow the Secretary of the US-DOL to assist participants and beneficiaries to locate a plan
 - ✓ Allow the Secretary of the US-DOL to change a plan administrator’s contact information as needed
- **Effective:** Database must be created no later than December 29, 2024



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The Retirement Savings Lost and Found Database

- Plan administrators must report certain plan information to the Secretary of the US-DOL:
 - ✓ Name of the plan and name and address of the plan administrator
 - ✓ Changes in plan status (name; administrator's name or address; termination, merger, consolidation, or division)
 - ✓ Name and taxpayer identifying number of for and current participants with a deferred vested benefit
- **Required** for both dual-qualified plans and PR-only defined contribution and defined benefit plans
- **Effective:** Notices to the Secretary to commence for plan years beginning after December 31, 2023
- Further guidance is expected



Next Steps for Plan Sponsors

- Be on the lookout for further guidance to be issued by the US-DOL
- Be prepared for notifying plan information when due



Paper Statements

- ERISA Section 105 requires plan administrators of defined contribution and defined benefit plans to provide participants with certain benefit statements within the frequency set forth under the law
- SECURE Act 2.0 modifies the requirements for benefit statements and frequency provisions



SECURE Act 2.0 Paper Statements

- Defined contributions plans – 1 paper statement per year
- Defined benefit plans – 1 paper statement every 3 years
- No paper statement required for participants who elect to receive all plan disclosures electronically
 - ✓ Disclosure must be done in compliance with applicable regulation
- **Required** for both dual-qualified plans and PR-only qualified plans
- **Effective:** plan years beginning after December 31, 2025



Next Steps for Plan Sponsors

- Plan sponsors should contact their plan recordkeepers before January 1, 2026, to ensure proper procedures are in place for compliance



Small Benefit Distribution

- Terminated participants sometimes leave their retirement plan accounts under the plan of their former employer, some of which can be small accounts
- Small accounts can impose costs, burdens and risks on plans and fiduciaries
- Qualified plans generally cannot distribute a benefit prior to normal retirement age without the participant's consent
 - ✓ Exception: ERISA permissible mandatory distributions (automatic rollovers and cash-outs)
- Until the adoption of SECURE Act 2.0 the maximum dollar amount for a mandatory cash out was a vested balance of \$5,000 or less
- SECURE Act 2.0 amended ERISA Section 203(e)(1) and the US Code to increase the maximum dollar amount



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Small Benefit Distribution

- The automatic cash-out maximum dollar amount is increased:
 - ✓ \$5,000 → \$7,000
- **Applicable** to both dual-qualified plans and PR-only qualified plans
- **Effective:** for distributions made after December 31, 2023

**The rule doesn't change the over \$1,000 automatic rollover provisions for US qualified plans; however, automatic rollovers are not allowed in PR*



Next Steps for Plan Sponsors

- Determine the plan's mandatory distribution or small benefit rule, if any
- If the maximum dollar amount is applied, you may consider establishing the new \$7,000 maximum
- If another maximum was established, identify reason and determine whether a change is warranted or desired



The Employee Plans Compliance Resolution System (EPCRS)

- Comprehensive system of correction programs for plan sponsors who have failed to satisfy the requirements of the US Code
- Permits plan sponsors to fix errors and avoid disqualification of the plan
- One of the correction programs is the Self-Correction Program (SCP)
 - ✓ Allows plan sponsors to self-correct certain types of errors or compliance failures without submitting the same to the IRS or obtaining IRS approval
- SECURE Act 2.0 significantly expanded the EPCRS to allow self-correction of more types of inadvertent operational errors and document failures



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Expansion to the Employee Plans Compliance Resolution System (EPCRS)

- Plans can correct any “eligible inadvertent failure”
 - ✓ Any failure that occurs despite the existence of practices and procedures that are reasonably designed to promote and facilitate compliance with applicable requirements of the US Code
 - ✓ Exception: does not include any failure that is egregious, relates to the diversion or misuse of plan assets or is related (directly or indirectly) to an abusive tax avoidance transaction
- Indefinite self-correction period, provided failures are corrected or there’s a specific commitment to implement a self-correction:
 - ✓ before they are identified by the IRS; and
 - ✓ within a reasonable time after they are discovered
- **Applicable** to dual-qualified plan
 - ✓ **Used as analogous correction for Puerto Rico-only qualified plans**
- **Effective:** December 29, 2022



Next Steps for Plan Sponsors

- Review plan administration procedures to ensure proper procedures are in place to identify and correct compliance errors
- Ensure proper documentation practices are in place when correcting an error to be able to demonstrate commitment to self-correct
- If undergoing an examination, note there's no longer a restriction on the ability to correct while under examination if actions demonstrating a specific commitment to implement a self-correction can be shown before the errors are identified by the IRS



Recovery of Overpayments

- Overpayments are generally distributions in excess of permissible amounts under the plan terms or applicable regulatory limits
 - ✓ e.g., amounts that a participant was not entitled to or received prematurely
- Although there are no specific requirements under ERISA, plan fiduciaries have an obligation under ERISA's general fiduciary duties to take reasonable steps to recoup overpayments
- The EPCRS has long permitted but not required correction of overpayments in compliance with certain requirements
- SECURE Act 2.0 provides new rules and overpayment recovery relief from both an ERISA fiduciary and the US Code



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Recovery of Overpayments

- Plan fiduciaries have discretion not to seek recovery of inadvertent overpayments without breaching fiduciary duties
- Relief is only available if certain conditions are met:
 - ✓ Individual account plans –if there is no impermissible forfeiture of a participant’s benefit
 - ✓ Defined benefit plans – if the plan continues to satisfy minimum funding rules and there would be no material impact on the plan’s ability to pay benefits
 - ✓ Plan maintains and follow procedures to prevent and minimize overpayments



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Recovery of Overpayments

- If a plan fiduciaries exercises the discretion to recoup, certain rules and limits must be followed, such as:
 - ✓ Interest or other additional amounts can't be recouped
 - ✓ Past overpayments to a participant can't be recouped from a beneficiary
 - ✓ Recoupment can't be sought if the first overpayment occurred more than 3 years before it was first notified in writing, unless there is fraud or misrepresentation
 - ✓ No recoupment may be sought through litigation threats or engagement of a collection agency or similar third party, except under limited conditions;
- Participant or beneficiary can contest the recoupment under the plan's benefit claims procedures
- Additional rules are applicable if recoupment is sought through the reduction of annuity benefit payments
- **Applicable** to both dual-qualified plans and PR-only qualified plans
- **Effective:** December 29, 2022



Next Steps for Plan Sponsors

- Review plan documents to identify whether there is a requirement to recover erroneously paid amounts
- Ensure you discuss with your plan provider or legal counsel recovery alternative for future situations considering SECURE Act 2.0 amendments
- Analyze whether you have prior overpayment error corrections around the effective date of the SECURE Act 2.0



SECURE Act 2.0

Small Immediate Financial Incentives to Participate

- New ERISA Section 408(b)(21)
- Prohibited transaction exemption under ERISA
- Employers can offer low-cost financial incentives (e.g., gift cards) to encourage participation in a 401(k) plan
- **Applicable** to both dual-qualified plans and PR-only qualified plans
- **Effective:** plan years beginning after December 29, 2022



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Notice to Unenrolled Participants and Disclosure Requirements

- No more unnecessary disclosure requirements for unenrolled participants
- Participants must have been provided with:
 - ✓ An annual notice of eligibility to participate during the annual enrollment period and any applicable election deadlines; and
 - ✓ Any document requested
- “unenrolled participant” means an employee who:
 - ✓ is eligible to participate in the plan;
 - ✓ has been furnished the Summary Plan Description pursuant to ERISA and any other legally required eligibility notices;
 - ✓ is not participating in the plan; and
 - ✓ satisfies any other criteria determined by the Secretary
- **Applicable** to both dual-qualified plans and PR-only qualified plans
- **Effective:** plan years beginning after December 31, 2022



Next Steps for Plan Sponsors

- Ensure plan administrators have the necessary information (e.g., full payroll data) to comply with the required annual reminder notice
- **Discussion Point:** What to do in auto-enrollment plans with individuals who elected not to participate?



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Matching Contributions for Student Loan Repayments

- Employers can make matching contributions to a 401(k) plan 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
- **Effective:** for contributions made for plan years beginning after December 31, 2023



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Catch-up Contributions Limits

- Catch-up contributions are pre-tax unless directed to a Roth account
- SECURE Act 2.0 eliminates the pre-tax catch-up contributions
- Catch-up contributions for individuals age 50 or older who earn more than \$145,000 (indexed annually) for the preceding calendar year, must now be made as after-tax Roth contributions
- Permissible for employees who earned less than the threshold, if allowed by the employer
- Effective for taxable years beginning after December 31, 2023



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Catch-up Contributions Limits

- SECURE Act 2.0 only amends the US Code
- PR-only tax qualified plans are not subject to the amendments
- Dual qualified plans need to identify potential applicability
- Note, however, that:
 - ✓ PR elective deferrals limit is capped below the federal limit (\$20,000 vs 22,500 in 2023; \$23,000 in 2024)
 - ✓ PR catch-up contributions limit is also below the federal limit (\$1,500 vs \$7,500 in 2023 and 2024)



Next Steps for Plan Sponsors and Administrators

- Analyze plan documents and operational agreements with service providers to detect applicable changes and dates on which compliance amendments must be adopted
- Coordinate applicable amendments to plan documents, contracts with external providers, summary plan description and other participant disclosures



Q&A



Thank You!

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