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SPECIAL REPORT

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SECURE ACT 2.0

President Biden signed the Secure 2.0 Act of 2022 ("the Act") into law on December 29, 2022 as part of the Consolidated Appropriations Act, 2023. The Act makes sweeping changes to provisions of the Internal Revenue Code affecting qualified plans such as your municipal plan.

Many of the provisions take effect immediately, while others will become effective in years to come. For governmental plans such as yours amendments required by the Act must be made to the plan by no later than the last day of the first plan year beginning on or after January 1, 2027.

Below is a brief summary of the changes enacted. We will provide additional information with regard to each of the new requirements on an on-going basis as corresponding regulations or rules may be issued.

I. CHANGES THAT APPLY TO GOVERNMENTAL DEFINED BENEFIT PLANS AND STAND-ALONE SHARE PLANS

Increase in Ages for Required Minimum Distributions

Participants in tax-qualified pension plans are not taxed on the value of their retirement benefits until they begin to receive benefits under the plan.

The deferral of taxes is limited by the Required Minimum Distribution rules in Section 401(a)(9) of the Code, which require that participants begin to receive benefits (and therefore pay taxes) once they reach a certain age after retirement.

For many years, retirees were required to begin to receive benefits once they had retired and reached age 70 ½. The first Secure Act, passed in 2019, raised that age to 72.

Section 107 of the Secure 2.0 Act of 2022 has further increased the tax deferral by again raising the age by which retired participants must begin to receive benefits. The new ages are as follows:

a) For individuals who attain age 72 after December 31, 2022, and age 73 before January 1, 2033, the applicable age is 73;
b) For individuals who attain age 74 after December 31, 2032, the applicable age is 75;

Reduction in penalty for failure to make Required Minimum Distributions (Effective taxable years after December 29, 2022)

The Code currently provides for an excise tax for failure to take a required minimum distribution equal to 50% of the amount of the missed distribution.

Section 302 of the Act reduces the tax generally to 25%, and provides that the tax shall be further reduced to 10% if the failure is corrected in accordance with certain conditions.

Increase in the maximum amount of mandatory distributions (Effective January 1, 2024)

Plans may currently provide that benefits of which the lump-sum value does not exceed $5000 will be paid mandatorily in the form of a lump-sum. Section 304 of the Act raises the limit, allowing plans to impose a lump-sum distribution for amounts up $7000.

Exclusion from Income of Certain Service-Related Disability Benefits for First Responders (Effective for eligible amounts received after December 31, 2026)

Section 309 of the act allows certain first responders (law enforcement officers, firefighters, paramedics, and emergency medical technicians) to exclude from gross income certain service-related disability pension or annuity payments after they reach retirement age.

Expansion of 72(t) Age Exemption for Qualified Public Safety Employees (Effective Immediately)

Generally, the penalty on early withdrawals under Section 72(t) does not apply to distributions made to an employee after separation from service after attainment of age 55. For qualified public safety employees, Section 72(t) replaces the age 55 exemption with a more favorable, lower age exemption. Prior to the Act, the applicable age for qualified public safety employees was 50, instead of 55. Section 329 of the Act further expands the exemption for qualified public safety officers by adding 25 years of service as a separate qualifying condition for the exemption, which now applies upon the earlier of attainment of age 50 or 25 years of service.

Expansion of Definition of Qualified Public Safety Employee for Purposes of 72(t) Age Exemption (Effective Immediately)

Prior to the Act, for purposes of the favorable 72(t) exemption discussed above, the term qualified public safety employee included governmental employees providing police protection, firefighting services, and emergency medical services. Section 330 expands the definition to include corrections officers, as well as forensic security employees providing for the care, custody and control of forensic patients.

Repeal of Direct Payment Requirement for Health Insurance Premiums (Effective Immediately)

Currently under Section 402(l) of the Code, Retired Public Safety Officers are permitted to exclude from income up to $3,000 per taxable year in distributions from governmental plans that are used to for the payment of qualified health insurance premiums. Prior to the Act, payments were required to be made directly from the pension plan to the insurer. Section 328 of the Act removes the direct payment requirement and now allows payment to come directly from the member.

II. CHANGES THAT APPLY TO GOVERNMENTAL STAND-ALONE SHARE PLANS BUT NOT TO GOVERNMENTAL DEFINED BENEFIT PLANS

Tax-Favored Withdrawals

The Act allows plans to provide for the following types of withdrawals with favorable tax treatment (including exemption from any 72(t) penalty):

- Starting in 2024, up to $1,000 for participant-certified personal and family emergencies;
- Starting in 2024, withdrawals up to the lesser of $10,000 or 50% of account balance, if a participant has been the victim of domestic abuse;
- effective immediately withdrawals by participants who have been diagnosed as terminally ill;
- With regard to federal disasters occurring on or after January 26, 2021, withdrawals by participants who live in the disaster up to $22,000 within 180 months of the disaster. Also loans related to federal disasters are allowed to be increased to the lessor of $100,000 or 100% of the account balance,
- Plans are already permitted to provide for distributions for qualified birth or adoption expenses. Currently, such distributions may be paid back at any time. For withdrawals after December 29, 2022, the repayment period is limited to

three years. For withdrawals that have already been taken, the repayment period ends December 31, 2025,

- beginning on or after December 29, 2025, up to $2500 annually (adjustable for inflation) for long-term care insurance.

III. PROVISIONS OF THE ACT WITH REGARD TO PLAN CORRECTIONS

Changes to requirements regarding overpayments (effective immediately)

The IRS has on an on-going basis provided guidance to trustees regarding requirements for recovering benefit overpayments to participants and beneficiaries.

Section 301 of the Act amends the Code to provide clearly defined rules relating to the recovery of overpayments.

Principally, the Act provides that a plan is not necessarily obligated to pursue the recovery of an overpayment.

We will prepare procedures for the trustees to adopt to ensure that future actions with regard to overpayments comply with the new requirements.

Expanded Self-Correction Program (Effective upon guidance issued by IRS within two years of December 29, 2022)

The IRS maintains several programs pursuant to which trustees may correct errors in the operation of the plan and/or failures to amend the plan timely.

Under certain programs, a flat fee and/or penalties are required to be paid to the IRS to resolve the error or failure. On the other hand, under the IRS' Self-Correction Program, certain "non-significant" errors may be corrected without any notice or payment of fees or penalties to the IRS.

The Act expands the type of errors and failures that may be resolved through Self-Correction. The program is no longer limited to "non-significant" errors, and may be used generally to correct any inadvertent error or failure, except those (1) that were identified by the IRS before any good-faith corrective measures were taken, or (2) with respect to which corrective measures were not timely taken.

The Act requires the IRS to issue new guidance in accordance with the expansion of the self-correction program.

IV. FOR INFORMATIONAL PURPOSES (THE FOLLOWING INFORMATION PRESENTS PROVISIONS OF THE ACT THAT DO NOT APPLY TO THIS PLAN BUT THAT MAY BE OF INTEREST TO PUBLIC EMPLOYEES. THE INFORMATION IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENTED AND SHALL NOT BE CONSTRUED AS LEGAL ADVICE)

Section 308 of the Act extends to private sector firefighters, the favorable 72(t) age exemption (50 or 25 Years of Service) that was previously limited to governmental public safety employees.

Section 306 Changes rules relating to elections for 457 plans

Some of the tax-favored withdrawals that are permitted under the Act (See Section II above) may also be available under 457 plans.