SUMMARY OF SECURE 2.0 ACT
FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

On December 29, 2022, the SECURE 2.0 Act was signed into law as part of the Consolidated Appropriations Act, 2023. The new law includes significant changes to retirement rules that primarily focus on expansion of retirement savings opportunities and access in Defined Contribution Plans. There are fewer law changes in SECURE 2.0 that affect Multiemployer Defined Benefit Plans. Following is a high-level summary of the key SECURE 2.0 provisions affecting Multiemployer Defined Benefit plans along with our observations.

Deferring the Required Beginning Date

Participants are required to receive a minimum distribution from qualified retirement plans at their Required Beginning Date. This date is generally April 1st of the calendar year following the calendar year in which a legally defined age is attained. Plans can defer this date for those that are *not* 5% owners of their companies to their age at employment termination.

The 2019 SECURE Act extended the attained age used to determine a participant's Required Beginning Date from 70-1/2 to 72 for those born on or after July 1, 1949. SECURE 2.0 further extends the attained age to 73 starting in 2023 for those born on or after January 1, 1951 and before January 1, 1960. Starting in 2033, the attained age is increased to age 75 for those born on or after January 1, 1960.

Financial penalties for late minimum required distributions are the responsibility of the individual but plans can have disqualification risk for not complying with the minimum required distribution regulations. SECURE 2.0 reduces the individual penalties for tax years beginning in 2023 from 50% to 25% of the late distribution and to 10% if corrected within a window period that could be as long as 2 years after the end of applicable tax filing year.

In addition, effective January 1, 2024, SECURE 2.0 amends the minimum distribution rules to allow a surviving spouse of a participant who dies prior to starting his/her benefit to elect to be treated as the participant for required minimum distribution purposes.

- *Rael & Letson Observations*: Many current demographic projections forecast a shortage of workers in the next 10-20 years. Phased retirement is also gaining in popularity. As a result, deferring required distributions to a later age adds desired flexibility for some people. There will be no mandatory age-based distributions in 2023 and none in 2033 and 2034 as a result of the age jumps. In 2023, plans should consider how they would like to implement these changes.

Increasing the Mandatory Cash-out Threshold

For many years, plans have had the option to payout benefits as a lump sum when the present value of a participant's (or beneficiary's) accrued benefit is less than $5,000. SECURE 2.0 increases this cash-out limit from $5,000 to $7,000 starting with distributions made after December 31, 2023.

- *Rael & Letson Observations*: Many plans have adopted small benefit cash-out provisions to simplify administration and reduce PBGC premiums. Plans have discretion on whether to impose mandatory cash outs for participants or beneficiaries who terminate and/or retire with small benefits. In practice, mandatory cash outs in a Multiemployer DB Plan can be uncommon because present values are usually above the $5,000 (now $7,000) threshold, although younger terminated vested participants or beneficiaries' benefits can have smaller present values that are under the cash out threshold if the plan permits pre-retirement cash outs.

Annual Funding Notice Changes

The annual funding notice provides a summary of a plan's funded status and other plan related information. SECURE 2.0 adds new information to the notice. Effective for plan years beginning after December 31, 2023, the annual funding notice must include a table of participant counts for the current year and the preceding two years and provide the average asset return for the plan year to which the notice relates.

- *Rael & Letson Observation*: The additional information required for the annual funding notice is straightforward and readily available. We expect the DOL to release a new model notice that incorporates the new information.

Paper Benefit Statements

SECURE 2.0 requires that DB Plan sponsors provide paper benefit statements at least once every three years starting in 2026. Plans are exempt from this requirement if electronic statements are furnished in accordance with DOL regulations.

- *Rael & Letson Observation*: Paper statements are still the primary practice in the Multiemployer DB Plan industry so few plans will need to consider this change requiring a paper statement once every three years.

Recovery of Overpayments

For overpayments after December 29, 2022, retirement plan fiduciaries do not have to seek recovery of all or a part of any "*inadvertent benefit overpayment*" from a participant or beneficiary that is not "culpable". If trying to collect an *inadvertent benefit overpayment* from a participant or beneficiary, plan fiduciaries are no longer permitted to charge interest and can now collect no more than 10% of the overpayment in any year. Generally, collection of future inadvertent benefit overpayments is limited to those where the first overpayment occurred within a 3-year period prior to participant notification.

- *Rael & Letson Observations*: Inadvertent benefit overpayments periodically happen in Multiemployer DB Plans and Trusts have policies in place for recovering these overpayments. Trustees should work with Plan Counsel on any desired policy modifications regarding the recovery of overpayments.

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(Continued)

EPCRS Corrections

The Employee Plans Compliance Resolution System ("EPCRS") is the most efficient and effective way to self-correct inadvertent eligible plan operational failures before they are brought to the plans attention by the DOL. The IRS is required to update existing guidance before the end of 2024 to expand a plan's ability to use EPCRS.

- *Rael & Letson Observations*: Identifying and expeditiously self-correcting any operational errors through EPCRS is a best practice to avoid more time-consuming and costly corrective actions. The SECURE 2.0 expansions that cover more failures are a welcome change for Plans.

Establishing a National Retirement Lost & Found Registry

By the end of 2024, the DOL, with assistance from the IRS, must establish a national lost and found registry that will contain plan contact information and participant data for lost participants. Plans will be required to initially submit and refresh thereafter any changed plan administration contact information. In 2025, information on terminated vested participants will need to be provided annually so that participants do not lose track of their retirement benefits. This information is required to be safely stored by the DOL and is only to be used to accurately connect the participant or beneficiary to the plan.

- *Rael & Letson Observations*: Lost participants have been an issue for some time and multiemployer plans are not immune. This will require some initial and ongoing support from all plans in 2024 and beyond.