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Correspondence Memorandum

Date: May 8, 2023

To: Deferred Compensation Board

From: Shelly Schueller
 Deferred Compensation Director

Subject: SECURE 2.0 Initial Analysis

This memo is for informational purposes only. No Board action is required.

SECURE 2.0, which was discussed at the Deferred Compensation Board’s (Board’s) April 2023 meeting ([Ref. DC I 04.20.23 I 7](#)), includes multiple sections that impact the Wisconsin Deferred Compensation Program (WDC). There are over 20 different provisions that may change how WDC participants save for and access their supplemental retirement savings. This memo lists the provisions of SECURE 2.0 that are effective in 2023 as well as optional provisions with later effective dates.

Implementing SECURE 2.0 for the WDC may require revisions to Ch. ETF 70 of the Wisconsin Administrative Code and the WDC Plan and Trust document. In addition, the WDC’s record keeper will need to update their systems, processes, forms and informational materials for employers and participants.

Table 1. SECURE 2.0 Sections Effective in 2023

Section	Topic	WDC Focus	Status
Section 107: Increased Required Minimum Distribution (RMD) Age	The age for RMDs increases: <ul style="list-style-type: none"> • Participants who turned age 72 in 2022 or earlier will need to continue taking RMDs as scheduled. • Participants turning 72 after Dec. 31, 2022 will have RMDs required at age 73. • Participants turning 74 after Dec. 31, 2023 will have RMDs required at age 75. This section is mandatory and begins in 2023.	WDC Plan and Trust Article 10.	Expect language changes for Plan and Trust document Article 10. Empower has updated materials to reflect RMD age of 73.

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Section 302: Decreased RMD Excise Penalty	<p>The IRS excise penalty for not taking a RMD by the given deadline decreases from 50% to 25% of the RMD amount.</p> <p>This section is mandatory and effective for taxable years beginning after the date of SECURE 2.0 enactment. [starting in 2023]</p>	n/a	Confirming implementation with WDC record keeper.
Section 306: First Day of the Month Contribution Changes	<p>Eliminates the “first day of the month” requirement for 457(b) gov’t plans. Participants may change their deferral rate at any time before the compensation is available to the individual.</p> <p>This section is effective for taxable years beginning after the date of SECURE 2.0 enactment. [starting in 2023]</p>	Revisions to WDC Plan and Trust Articles 2.02 and 2.03	<ul style="list-style-type: none"> • Developing language revisions • Working with WDC record keeper to implement.
Section 327: Surviving Spouse Election to be Treated as Employee	<p>Allows a spousal beneficiary to irrevocably elect to be treated as the employee for RMD purposes and if the spouse is the employee’s sole designated beneficiary, the applicable distribution period after the participant’s year of death is determined under the uniform life table.</p> <p>This section is mandatory and effective for taxable years beginning after December 31, 2023.</p>	Revisions to WDC Plan and Trust Article 10.02	ETF analyzing and expects clarifications on how it applies to gov’t plans.
Section 329	<p>Extends the public safety officer exemption from the 10% early withdrawal penalty to now apply to corrections officers who separate from service in the year they reach age 50 or later and to public safety officers that are separated from employment with at least 25 years of service. These employees may withdraw money without being subject to a 10% early withdrawal penalty.</p> <p>This section is effective beginning after the date of SECURE 2.0 enactment. [starting in 2023]</p>	Reviewing WDC Plan and Trust Article 10.06 for possible changes.	Reviewing to determine if changes needed

Section	Topic	WDC Focus	Status
Section 330	<p>Expands the definition of public safety employee to include certain corrections officers and forensic security employees, thus making them eligible for the age 50 exception to the 10% early withdrawal penalty.</p> <p>This section is effective beginning after the date of SECURE 2.0 enactment. [starting in 2023]</p>	<p>Reviewing WDC Plan and Trust definition of public safety officer for possible changes.</p>	<p>Review not yet started.</p>

In addition to the sections outlined in the previous table, ETF will soon begin analyzing several additional sections of SECURE 2.0, including:

- Section 109: Increases the limit on catch-up contributions beginning after December 31, 2024;
- Section 304: Starting in 2024, this section increases the dollar limit for mandatory “cash out” distributions from \$5,000 to \$7,000; and
- Section 312: Effective for plan years beginning after 2022, this optional section allows a plan administrator to rely on an employee’s self-certification that they have had a safe harbor event that constitutes a deemed hardship for purposes of taking a hardship withdrawal from a 401(k) plan or a 403(b) plan. The administrator is permitted to rely on the employee’s certification that the distribution is not in excess of the amount required to satisfy the financial need and that the employee has no alternative means reasonably available to satisfy the financial need. A similar rule applies for unforeseen emergency withdrawals from s. 457 plans such as the WDC.

There are also multiple potential distribution-related sections of SECURE 2.0 that ETF expects to bring to the Board in the future for review and possible adoption. These provisions are optional and include:

- Section 115: Allows one penalty-free withdrawal of up to \$1,000 per year for “unforeseeable or immediate financial needs relating to personal or family emergency expenses” without penalty. The withdrawal may be repaid within three years. Only one withdrawal per three-year repayment period is permitted if the first withdrawal has not been repaid.
- Section 311: Requires qualified birth or adoption distributions to be recontributed within three years of the distribution to qualify as a rollover contribution.
- Section 314: Permits certain penalty-free early withdrawals in the case of domestic abuse in an amount not to exceed the lesser of \$10,000 (indexed) or 50% of the value of the employee’s vested account under the plan. In addition, such eligible distributions to a domestic abuse victim may be recontributed to applicable eligible retirement plans, subject to certain requirements.

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- Section 326: Creates an exception to the 10% early withdrawal penalty for distributions to individuals whose physician certifies that they have an illness or condition that is reasonably expected to result in death in 84 months or less.
- Section 331: Provides permanent special rules governing plan distributions and loans in cases of qualified federally declared disasters if the participant's principal home was in the disaster area and the participant sustained economic loss because of the disaster. Both conditions must apply.

ETF will continue discussing SECURE 2.0 with the Board, including an update on record keeper implementation and Plan and Trust document draft language revisions that would enable WDC compliance with SECURE 2.0

Staff will be at the meeting to answer any questions.