



Keeping up with SECURE 2.0 guidance on new requirements and choices

May 23, 2024



Presenters



Fred A. Farkash, CEBS

Director, Compliance Consulting Practice

o 212.330.1227

e fred.farkash@buck.com



Gary W. Walsh, J.D.

Director, Compliance Consulting Practice

m 412.670.2291

e gary.walsh@buck.com

Jane Lee, J.D. – Moderator

Principal, Compliance Consulting Practice

o 212.330.1043

e jane.lee@buck.com

Background

SECURE 2.0 Act of 2022 (“SECURE 2.0”) was signed into law on December 29, 2022, covering a wide array of mandatory and optional changes for retirement plans under both Employee Retirement Income Security Act (“ERISA”) and the Internal Revenue Code (the “Code”).

- **Operational Implementation:**
 - More than 90 provisions impacting workplace retirement plans
 - Clarifies specific provisions of the SECURE Act of 2019
 - Improves ability to save for retirement, primarily through defined contribution plans
 - Intended to simplify plan administration (e.g., plan notices, hardships) but sometimes administration is more complex (e.g., catch-ups)
 - Some changes effective as of date of enactment (December 29, 2022), while others are effective in subsequent years (many changes are effective in 2024)
 - When considering SECURE 2.0 options, implementation considerations are a critical factor in plan decisions
- **Amendment Deadlines:** Operational compliance required as of the effective date for each provision. Plan documents do not have to be amended until December 31, 2026 (December 31, 2028 for collectively bargained plans, or December 31, 2029 for governmental plans).

SECURE 2.0 timeline – select provisions

Additional agency guidance may impact the implementation of these rules

■ Mandatory changes
■ DB Plan changes

Date of enactment or earlier	2023	2024	2025	2026 and later
<ul style="list-style-type: none"> • Overpayments ■■ • Disaster relief • QLAC changes • Roth accounts may receive match and nonelective contributions • Penalty-free distributions for terminal illness and to firefighters • Birth and adoption repayment period • EPCRS expansion ■ • Enhancing retiree health benefits ■ • Partial annuitization 	<ul style="list-style-type: none"> • Change in RMD age to 73 and excise tax ■■ • Self certification of hardships • Unenrolled participant disclosures • Cash balance projected interest crediting rate ■■ 	<ul style="list-style-type: none"> • Relief for elective deferral failures • Matching contributions based on student loan repayments • Increase in mandatory cash-outs ■ • Pension linked emergency savings accounts • DB plan annual funding notice ■■ • PBGC premium fixed ■ • RMDs not required from designated Roth accounts • RMD rule for spousal sole beneficiary election • Lost and found database ■■ • Penalty-free distributions for emergency expenses and to domestic abuse victims • Blended performance benchmarks • Lump sum distribution notices ■ 	<ul style="list-style-type: none"> • DC auto enrollment required ■ • Long-term part-time employee service periods shortened in DC plans ■ • Increased catch-up contribution limits for ages 60-63 • Penalty-free distribution of long-term care insurance or coverage 	<ul style="list-style-type: none"> • Deadline for amendments to comply with SECURE Act/Miner's Act/CARES Act/SECURE 2.0: ■■ <ul style="list-style-type: none"> — December 31, 2026 for nongovernmental, non-collectively bargained plans — December 31, 2028 for collectively bargained plans — December 31, 2029 for governmental plans. • 2026: Plan benefit statement – hard copy ■■ • 2027: Savers match tax credit contributions • 2033: RMD age increased to 75 ■■ • 2026: Roth catch-up contributions for high earners ■

* Date of enactment is December 29, 2022; changes noted as DB plan changes may also apply to DC plans depending on terms.

Wide range of changes

- **Mandatory and optional plan design features**
 - Expansion of auto enrollment (mandatory)
 - Reduction in eligibility requirements for long-term, part-time workers (mandatory)
 - Permitting small financial incentives for deferring into a plan (optional)
- **Required minimum distribution (RMD) and life annuities**
 - Later required beginning dates for minimum distributions
 - Reduction in excise tax for late RMDs
 - Removing certain barriers to life annuities in a DC plan
- **Plan distributions (all optional)**
 - Terminally ill participants
 - Victims of domestic abuse
 - Provisions for emergency savings
 - Facilitating automatic portability
- **Reporting and disclosure (all mandatory)**
 - Paper statements
 - Lump sum notices for DB plans
- **Miscellaneous**
 - Revisions to the Employee Plans Compliance Resolution System (EPCRS)

Further guidance on SECURE 2.0

- **IRS Notice 2023-43.** A full revision to EPCRS is expected in 2024; expands self-correction under Employee Plans Compliance Resolution System (EPCRS).
- **IRS Notice 2023-62.** Provides a two-year administrative transition period to implement the new rule that age 50+ catch-up contributions by high earners can only be Roth. Current catch-up contribution administration can continue through 2025 pending further guidance.
- **Proposed regulations** (issued November 24, 2023) on vesting and eligibility rules for long-term, part-time employees.
- **IRS Notice 2024-2.** A grab bag of initial guidance that provides direction on discrete issues to begin implementation of SECURE 2.0.
- **IRS Notice 2024-22.** Includes initial guidance on implementing and administering pension linked emergency savings accounts (“PLESAs”).
- **DOL FAQs** (January 17, 2024) addressing PLESAs.
- **Proposed regulations** (issued on January 29, 2024) on automatic portability

Further guidance on SECURE 2.0 (cont.)

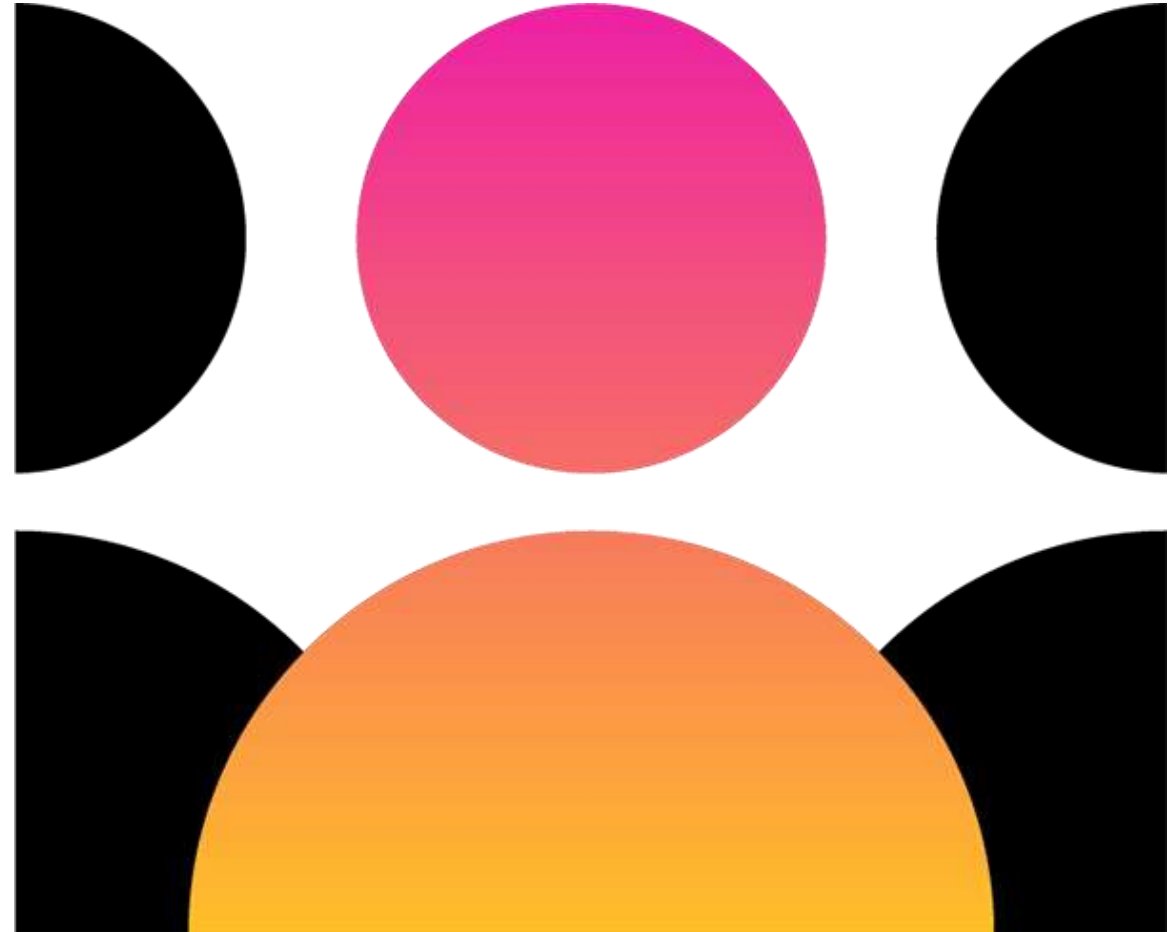
- **DOL proposed information collection request on Retirement Savings Lost and Found database** (issued April 16, 2024). Comments on the proposal are due by June 17, 2024. Until DOL establishes a portal to submit data, plans can voluntarily submit a spreadsheet as attachment to the 2023 Form 5500.
- **Disaster distributions guidance** – fact sheet on disaster distributions

Required minimum distributions (RMD) relief

- **IRS Notice 2023-54** provides transition relief for RMDs to participants born in 1951 because their RMD age changed from 72 to 73. Also provides relief from plan disqualification and missed RMD excise tax for “specified RMDs” to beneficiaries under SECURE Act’s 10-year rule for beneficiaries who are not “eligible designated beneficiaries” for DC plans.
- **IRS Notice 2024-35** provides that final RMD regulations do not apply to calendar years before 2025. Extends relief for “specified RMDs” in Notice 2023-54 to beneficiaries of employees (and beneficiaries of eligible designated beneficiaries) who died in 2023.

Long-term, part-time employees (LTPTEs)

- **Effective January 1, 2024, SECURE 1.0.**
Employees with at least 500 hours of service in three consecutive years (measured from January 1, 2021) must be eligible to make deferrals to 401(k) plans.
- **Effective January 1, 2025, SECURE 2.0.**
Includes 403(b) plans and reduced service requirement to 500 hours in two consecutive years.
- Eligibility for match or other employer contributions not required, but if provided under the plan, vesting must be determined based on no more than 500 hours per year.



Long-term, part-time employees (LTPTEs)

Proposed regulations issued November 24, 2023

- Certain eligibility rules still apply, (e.g., eligibility, vesting computation periods, entry date rules, and hours-based equivalencies).
- Can still exclude LTPTEs based on age (i.e., not greater than 21).
- Can still exclude employees (including LTPTEs) based on bona-fide job-based classifications other than age and service. However, hours worked under excluded class must count toward LTPTE eligibility requirements if employee changes to a covered class. Union and nonresident aliens without U.S. source earned income not considered LTPTEs.
- Can exclude LTPTEs from (1) nondiscrimination (ADP/ACP, general test) and coverage testing, but must be consistent — exclude all or none, and (2) top heavy vesting and minimum contributions but cannot exclude former LTPTEs from either of these.
- ADP/ACP safe harbor plans can exclude LTPTEs from receiving safe harbor contributions if the plan so provides.

Long-term, part-time employees (LTPTEs)

Proposed regulations issued November 24, 2023 (continued)

- Plans that provide for more generous eligibility (e.g., immediate eligibility for deferrals, <500 hours in a year, or elapsed time) already comply and technically do not have LTPTEs. (Amendment to provide more generous eligibility gets extended SECURE Act amendment deadline).
- Once an LTPTE becomes a participant, vesting service based on 500 hours in a vesting computation period. (Can exclude hours before 2021).
- **Surprise:** LTPTE rules apply to governmental and church plans — even though not subject to ERISA minimum participation and vesting!
- Nonvested participants rehired after break-in-service (rule of parity) greater than five years can become LTPTEs if they are required to meet eligibility computation period again.

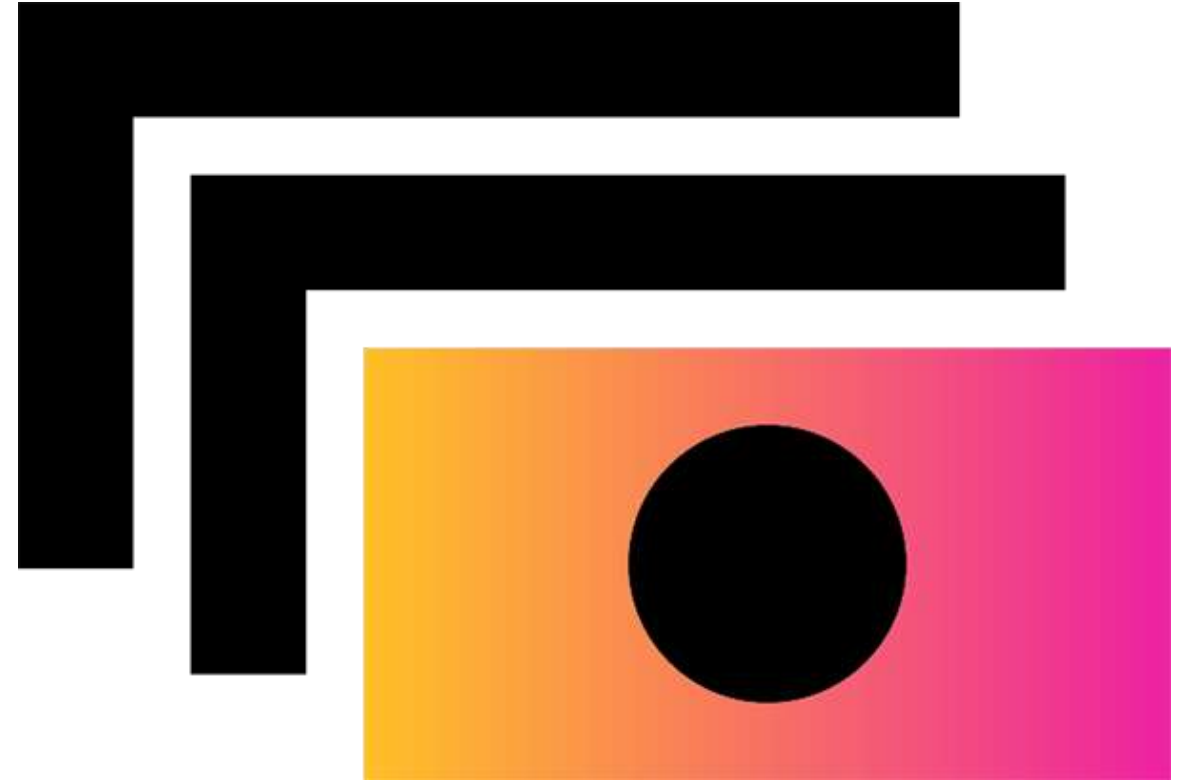


De Minimis financial incentives

SECURE 2.0 allows a *de minimis* financial incentive (e.g., gift cards/certificates) to employees who begin contributing deferrals to a 401(k) or 403(b) plan (previously prohibited under the “contingent benefit rule”) that only permitted matching contributions as an incentive.

Notice 2024-2

- Sets \$250 limit on value of incentive.
- Cannot be provided to a participant already making deferrals.
- Taxable to the employee and treated as wages for employment tax purposes (if paid in cash or equivalent), unless another exception applies.



Automatic enrollment mandate

Under SECURE 2.0, 401(k) or 403(b) plans established after December 29, 2022 must provide for automatic enrollment and automatic escalation beginning with the 2025 plan year. Plans established before December 29, 2022 are grandfathered.

Notice 2024-2 provides details on application to common plan scenarios, including plan mergers and spin-offs.

- If two plans established prior to December 29, 2022 are merged, the merged plan is grandfathered, and the automatic enrollment mandate will not apply to the merged plan. If one of the merging plans was established on or after December 29, 2022, then the merged plan will be subject to the automatic enrollment mandate. Certain exemptions apply.
- However, the merged plan will be exempt from the mandate if certain requirements are met, including (1) the merger is a result of a stock or asset purchase, (2) the grandfathered plan is the surviving plan and (3) the merger happens by the end of the plan year following the plan year of the corporate level transaction.
- If a plan is spun-off from a grandfathered plan, “the new spun-off plan” generally is also grandfathered and not subject to the automatic enrollment obligation.

Automatic enrollment/auto escalation error correction

SECURE 2.0 made permanent a temporary EPCRS safe harbor for plans with automatic contribution features — can correct certain operational errors involving elective deferrals without making an employer contribution for missed deferrals.

Notice 2024-2

- For automatic enrollment/automatic escalation failures corrected after December 31, 2023:
 - Correct deferrals must begin by earlier of (1) employee's first pay date on or after the last day of the 9½ month period after the end of the plan year during which the error first occurred, or (2) the first pay date on or after the last day of the month following the month in which the employee notifies the plan of the error.
 - Corrective matching contributions must be made within a reasonable time after the date on which the correct elective deferrals begin (or would have begun, for a terminated employee). A corrective match that is made within six months following the elective deferral correction is treated as having been made within a reasonable time.
- The safe harbor applies to both active and terminated employees.

Emergency expenses/savings and PLESAAs

Sponsors of 401(k), 403(b), and governmental 457(b) plans may offer penalty-free emergency personal expense distributions and/or “pension-linked emergency savings accounts” (PLESAAs) starting in 2024.

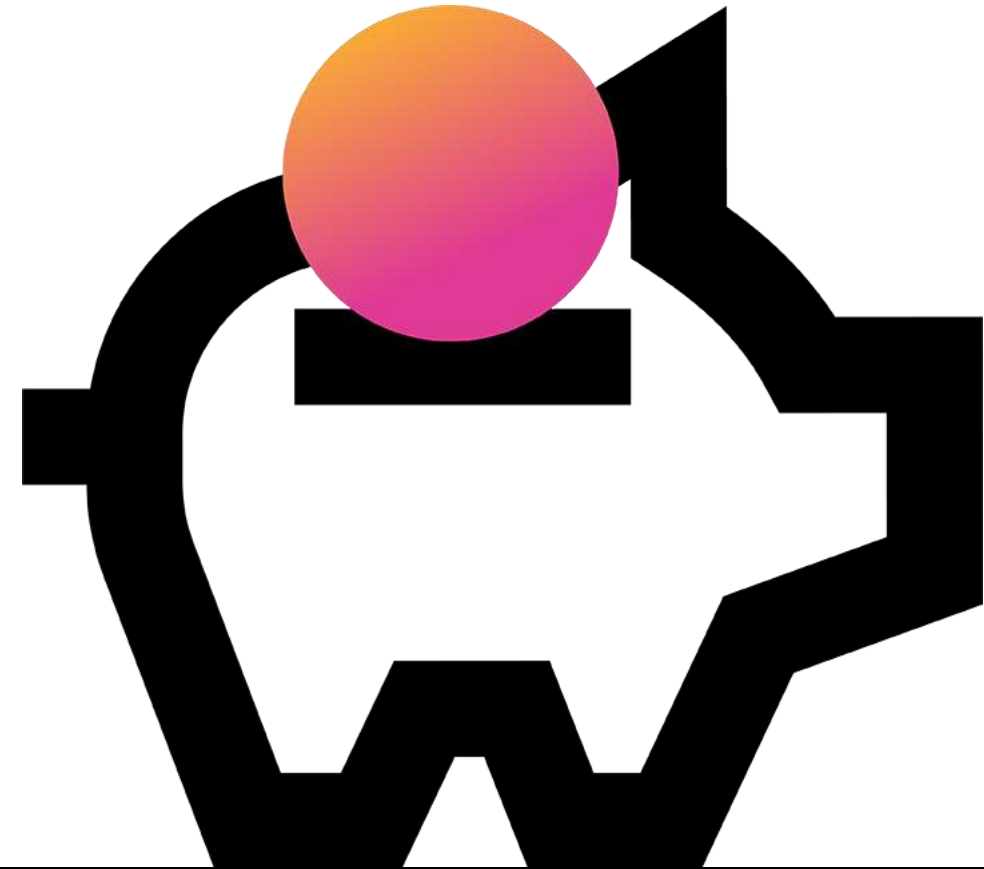
Unforeseeable or immediate emergency expenses

- Optional distribution for “unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses” (once per calendar year up to \$1,000)
- Can rely on participant’s written certification that they meet the emergency standard
- Not limited to NHCEs
- Distribution of pretax deferrals will be subject to income taxes, but can be repaid within three years
- No new distribution in the following three calendar years — unless repaid
- Exempt from 10% early distribution penalty
- Can be offered in addition to, or instead of, PLESAAs

Emergency expenses/savings and PLESAs (cont)

PLESAs (Notice 2024-22 and DOL FAQs)

- Contributions made on a Roth basis — for NHCEs only
- No minimum but contributions capped at \$2,500 (indexed)
- Distributions must be available at least once per month at the participant's discretion
- No fees or charges for first four withdrawals in a calendar year
- Exempt from 10% early distribution penalty
- PLESAs must be matched at the same rate as an elective contribution
- Notice 2024-22 addresses anti-abuse provisions regarding match
- Provides examples, but other reasonable measures to limit match to the limited frequency or amount permitted



Distributions to terminally ill participants

A distribution taken before the participant reaches age 59½ is subject to a 10% additional tax unless an exception applies. SECURE 2.0 added an exemption from the additional tax for participants who are terminally ill. Applicable to 401(a) (e.g., 401(k) and defined benefit plans), 403(b) plans and IRAs, but not governmental 457(b) plans.

Notice 2024-2

- A terminally ill individual is someone certified by a physician as having an illness or physical condition that is reasonably expected to result in death in 84 months or less.
- Certification must (1) be from a doctor of medicine or osteopathy legally authorized to practice by their state, (2) include specific information, and (3) be provided to the plan administrator.
- There is no dollar limit on the amount of the distribution. Distribution must occur after certification (not before).
- The IRS intends to issue regulations under IRC Section 72(t) that may include additional guidance on this provision.

Distributions to victims of domestic abuse

A participant who takes a distribution before age 59½ is generally subject to a 10% additional tax unless an exception applies. SECURE 2.0 added an exception to the additional tax for participants who are victims of domestic abuse. Applicable to DC qualified plans, 403(b) and IRAs.

- Permits penalty-free early withdrawal in the case of domestic abuse in an amount not to exceed the lesser of \$10,000 (adjusted) or 50% of the value of the employee's vested account under the plan (and all plans in the controlled group).
- This distribution can be repaid within three years.
- Distribution must be made to an individual during the one-year period beginning on any date on which the individual is a victim of domestic abuse.
- Domestic abuse is defined as “physical, psychological, sexual, emotional, or economic abuses, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim's ability to reason independently, including by means of abuse of the victim's children or another family member.”
- The IRS intends to issue regulations under IRC Section 72(t) that may include additional guidance on this provision.

Defined benefit plan cash balance backloading rule change

- Defined benefit plans must meet one of three “anti-backloading” rules (133⅓% rule, fractional rule or three percent method).
- Before SECURE 2.0, IRS guidance for cash balance plans required them to assume that current interest crediting rate would continue (or that the rate would be zero if it was less than zero in the current year). When interest rates dropped, plans with pay credits that increase with age or service and variable interest crediting rates, had to be amended to include a “floor” on the interest crediting rates to fix the backloading problem (not anticipated when rates were higher) — increasing plan costs.
 - SECURE 2.0 amended the rules to allow backloading test to use a reasonable projection of interest crediting rates (no greater than six percent) rather than current year’s interest rate for plan years beginning after enactment, December 29, 2022.
- **Notice 2024-2** allows affected plans (with ongoing pay credits that are age/service based) to be amended to remove a floor on interest crediting rates without violating the anti-cutback rule going forward (not retroactively). Also allows plans to be amended to switch from a fixed interest crediting rate (six percent or less) to a variable rate going forward (subject to certain limitations).

Automatic portability

SECURE 2.0 provides a permanent “prohibited transaction exemption (PTE)” to cover receipt of fees by an automatic portability service provider (effective December 29, 2023) who no longer have to request PTEs from DOL. Automatic portability allows retirement plans to hire an “automatic portability provider” to automatically transfer assets from a default IRA into a new employer’s plan when the employee changes jobs.

Proposed regulations issued January 29, 2024:

- Restricts provider’s use of participant data, requires provider to maintain records demonstrating compliance with exemption conditions and a website listing participating recordkeepers and their fees.
- Provider cannot receive indirect compensation — only reasonable direct fees paid by plan sponsor.
- Provider must meet 408(b)(2) rules for disclosing compensation and plan fiduciary must agree to them. Fees must be disclosed in SPDs/SMMs.
- Receiving plan must invest automatic portability rollovers in a qualified default investment alternative (QDIA) or based on current investment election.
- Plan must designate a plan official responsible for monitoring process, transfers and transmittal of funds, ensuring the correct fees are taken by the provider sending of required notices to participants.

Questions

