Legislative and regulatory bulletin

SECURE 2.0 is here. What do you need to know?

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On December 29, 2022, the president signed into law an omnibus funding bill that included the SECURE 2.0 Act of 2022 (SECURE 2.0)[1]. Seen as a sequel to 2019's Setting Every Community Up for Retirement Enhancement (SECURE) Act, the new law contains 92 separate provisions that make changes to the laws governing employer plans and IRAs.

Below is a summary of some of SECURE 2.0's key provisions, followed by a chart that shows the plans or accounts to which they apply, along with their effective dates.

Increase the starting age for required minimum distributions (RMDs). The SECURE Act raised the age at which retirement plan distributions must begin from 70 ½ to 72. SECURE 2.0 further increases the age to 73 for individuals who reach age 72 after 2022. The age will be increased again, to age 75, for those who reach age 74 after 2032.

Enhance the new plan startup credit for small employers. The SECURE Act increased an existing tax credit to 50% of an employer's out-of-pocket costs of starting up a plan, to a maximum credit of $5,000 per year for three years for employers with 100 or fewer employees. Prior to the SECURE Act change, which became effective in 2020, the maximum credit was $500. Beginning in 2023, SECURE 2.0 increases the 50% limit to 100% for employers with 50 or fewer employees.

Provide tax credits for plan contributions made by small employers. Employers with up to 50 employees that establish a plan will be entitled to a credit for contributions made on behalf of employees whose wages do not exceed $100,000. The credit is available for the first five years the plan is in existence. The maximum credit per employee is $1,000. The credit amount will be phased out for employers with between 51 and 100 employees. This new credit is effective for years beginning after 2022.

[1] H.R. 2617

Permit employer matching contributions on a Roth basis. Under the Act, defined contribution (DC) plans can add a feature that gives participants the option of having their employer make fully vested matching or other employer contributions on an after-tax basis to their plan's Roth account.

Enhance qualifying longevity annuity contracts. A qualifying longevity annuity contract (QLAC) is a deferred annuity contract, purchased with IRA or DC plan funds, whose payments can commence as late as age 85. Before payments from the contract start, QLACs are generally exempt from the required minimum distribution rules. Prior to SECURE 2.0, IRS rules limited the amount that could be used to purchase a QLAC to the lesser of 25% of an individual's account balance or $145,000. Effective December 29, 2022, the Act repeals the 25% limit and allows up to $200,000 to be used to purchase a QLAC.

Give small incentives for contributing to a plan. Prior to the Act, employers were prohibited from giving any financial incentives to employees to encourage them to contribute to a plan, other than matching contributions. SECURE 2.0 permits employers to provide de minimis incentives—such as low dollar gift cards—to help improve participation in 401(k) and 403(b) plans.

Require catch-up contributions to be made on an after-tax Roth basis. Beginning in 2026, SECURE 2.0 will mandate that catch-up contributions made by participants with wages in excess of $145,000 for the prior calendar year be made to the plan's Roth account. This provision was initially effective for the 2024 plan year, but because of pressure from plan sponsors, the effective date was administratively moved by the IRS to 2026. Once this provision becomes effective, affected participants will not have the option of choosing between pre-tax deferrals or Roth contributions.

Permit matching contributions on behalf of employees who are repaying student loans. Many employees are unable to save for retirement through their employer's plan because they are paying off their student loans. Those employees are therefore missing out on any matching contributions that their employer may make. Beginning in 2024, the Act permits employers to make matching contributions to 401(k), 403(b), 457(b) and SIMPLE IRA plans for the benefit of those employees.

Exempt in-plan Roth accounts from lifetime RMDs. While RMDs are not required from Roth IRAs during the life of the IRA holder under current law, lifetime RMDs are required from Roth accounts within 401(k)s and other DC plans. SECURE 2.0 will exempt in-plan Roth accounts from RMDs during the life of the participant, effective 2024.

Create "starter 401(k)" plans. The Act creates a new, streamlined 401(k) plan for employers that don't maintain other plans, effective for plan years beginning after 2023. Only employee deferrals are allowed, and the annual limit on those contributions can be no more than the limit that applies to IRAs. The plan must automatically enroll employees at a rate of at least 3% but no more than 15% of pay unless the employee opts out. These arrangements are exempt from the nondiscrimination and top-heavy rules. The Act also creates a 403(b) version of this plan.

Require new plans to include auto enrollment and auto escalation. Under the Act, 401(k) and private sector 403(b) plans established on or after the Act's effective date (December 29, 2022) will be required to automatically enroll employees at a starting rate of at least 3% of pay and annually increase the rate by 1% until it reaches at least 10% but not more than 15%. However, those plans will not be required to implement the automatic enrollment until the plan year beginning in 2025. Employees can opt out. Some exceptions apply, including businesses with no more than 10 employees and those that have been in existence for less than three years. Plans in existence as of the date of enactment of SECURE 2.0 are grandfathered.

Increase the catch-up amount for individuals aged 60, 61, 62 and 63. Currently, participants who are 50 or older can make catch-up contributions to their 401(k), 403(b) or 457(b) plans. The catch-up limit for 2023 is $7,500. Beginning in 2025, for individuals aged 60 to 63, the Act raises the limit to 50% more than the regular catch-up limit. For example, if the regular catch-up limit in 2025 is $8,000, a 60-year-old participant's limit will be $12,000.

Require long-term part-time employees to join 401(k)s sooner. The SECURE Act will require employers to permit employees who work at least 500 hours in three consecutive 12-month periods to contribute to their 401(k) plans. That requirement first applies in the 2024 plan year. SECURE 2.0 shortens the three-year requirement to two years for plan years beginning after 2024. The Act also extends this requirement to private sector 403(b) plans.

Create in-plan emergency savings accounts. SECURE 2.0 permits employers to offer "pension-linked emergency savings accounts" (ESAs) within their DC plans, to which non-highly compensated employees can contribute. The maximum cumulative contributions, reduced by any withdrawals, will be $2,500. Contributions that exceed the $2,500 limit will spill over to the long-term retirement savings portion of the plan. Employers can even opt to automatically enroll participants in ESAs at a rate of up to 3% of pay. Contributions are made on an after-tax Roth basis. Employees with ESAs can withdraw the money from their accounts when needed. These contributions are treated as regular deferrals for matching purposes. This option becomes available in 2024.

Permit certain rollovers from 529 accounts to Roth IRAs. Beginning in 2024, the Act will allow tax- and penalty-free rollovers from 529 college savings accounts to Roth IRAs for 529 beneficiaries. The 529 must have been open for at least 15 years, and the limit on the amount that can be rolled over in any year is the limit on Roth IRA contributions in effect that year. The maximum amount that can be rolled is $35,000 over the beneficiary's lifetime.

Replace the Saver's Credit with the Saver's Match. Currently, a nonrefundable tax credit of up to $1,000 is available to low and moderate income workers who contribute to IRAs or employer retirement plans. Starting in 2027, the Act will replace the credit with a match from the federal government equal to 50% of plan or IRA contributions, up to $2,000. The match will be deposited into the taxpayer's plan account or IRA.

Create a retirement savings lost and found. The Act directs the Department of Labor to establish an online database within two years that will enable individuals to search for lost retirement accounts.

Expanded investment options for 403(b) plans not included

To the disappointment of many sponsors of 403(b) plans, a highly anticipated proposal that would have permitted them to add collective investment trusts (CITs) to their plans' menus was not included in SECURE 2.0. While the Act did amend the relevant section of the Internal Revenue Code, it did not change the parts of the securities laws that would be necessary to allow CITs to admit 403(b) plans as investors. It is hoped that Congress will make these changes in the future.

Agency guidance expected

There are many other notable provisions in SECURE 2.0, a number of which become effective after 2023. In the interim, we expect that the Internal Revenue Service and the Department of Labor will be issuing guidance that clarifies some of the Act's provisions.

SECURE 2.0
Applicability and effective dates of key provisions

PROVISION	APPLICABILITY	EFFECTIVE DATE
Increase the starting age for RMDs	Qualified plans (e.g., 401(k) plans), traditional IRAs, 403(b) and 457(b) plans	Age 73 for individuals who reach age 72 after 2022; age 75 for those who reach age 74 after 2032
Enhance the new plan startup credit for small employers	Qualified plans, SIMPLE IRA and Simplified Employee Pension (SEP) plans	Tax years beginning after 2022
Provide tax credits for plan contributions made by small employers	Qualified plans, SIMPLE IRA and Simplified Employee Pension (SEP) plans	Tax years beginning after 2022
Permit employer matching contributions on a Roth basis	401(k), 403(b) and 457(b) plans	December 29, 2022
Enhance qualifying longevity annuity contracts	DC plans and traditional IRAs	December 29, 2022
Give small incentives for contributing to a plan	401(k) and 403(b) plans	Plan years beginning after December 29, 2022
Require catch-up contributions to be made on an after-tax Roth basis	401(k), 403(b) and 457(b) plans	Tax years beginning after 2025 Note that this provision was administratively extended from an earlier effective date.
Permit matching contributions on behalf of employees who are repaying student loans	401(k), 403(b), 457(b) and SIMPLE IRA plans	Plan years beginning after 2023
Exempt in-plan Roth accounts from lifetime RMDs	401(k), 403(b) and 457(b) plans	Tax years beginning after 2023
Create "starter 401(k)" plans	401(k) and 403(b) plans	Plan years beginning after 2023
Require new plans to include auto enrollment and auto escalation	401(k) and private sector 403(b) plans	Plan years beginning after 2024
Increase the catch-up amount for individuals aged 60, 61, 62 and 63	401(k), 403(b), 457(b) plans and SIMPLE IRA plans	Tax years beginning after 2024
Require long-term part-time employees to defer into plans sooner by reducing the waiting period from 3 years to 2 years	401(k) and private sector 403(b) plans	Plan years beginning in 2025 Note that the first SECURE Act required that long-term part-time employees be allowed to defer beginning in 2024

SECURE 2.0

Applicability and effective dates of key provisions

PROVISION	APPLICABILITY	EFFECTIVE DATE
Create in-plan emergency savings accounts	401(k), 403(b) and 457(b) plans	Plan years beginning after 2023
Permit certain rollovers from 529 accounts to Roth IRAs	529 plans	Distributions after 2023
Replace the Saver's Credit with the Saver's Match	IRAs, 401(k), 403(b), 457(b) and SIMPLE IRA plans	Tax years beginning after 2026
Create a retirement savings lost and found	Defined contribution and defined benefit plans	To be developed before 2025

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