Congress Revamps Retirement Planning with Secure 2.0

Alert
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Congress made several changes to retirement plans as part of the Consolidated Appropriations Act of 2023, which recently passed both the House and Senate. The final bill contains several provisions affecting retirement plans under Division T of the bill titled "Secure 2.0 Act of 2022." The 2.0 builds on the Setting Every Community Up for Retirement Act (SECURE Act), which passed in 2019.

Congress has provided an official summary of all of the provisions. Below is a high level review of some of the key provisions that affect plan sponsors of retirement plans.

- Increased Age for Required Beginning Date on Required Minimum Distributions
  The age for required minimum distributions is increased to age 73 beginning on January 1, 2023, and further increased to age 75 on January 1, 2033.
- Waiver of Required Minimum Distributions for Roth Accounts
  The requirement of pre-death distributions from Roth designated accounts in an employer retirement plan are eliminated, effective for taxable years beginning after December 31, 2023.
- Higher Catch-Up Limit at Ages 60-63
  For plan years after December 31, 2024, the catch-up contribution limitation is increased to the greater of $10,000 or 50% of the regular catch-up contribution amount for individuals who have attained ages 60, 61, 62, and 63. Currently, the catch-up contribution amount is generally $7,500, so the provision would increase the catch-up contribution amount to $11,250. This increase is adjusted for inflation after 2025. Catch-up contributions will now be subject to Roth after-tax treatment for those earning more than $145,000 in the prior year.

- Increase in Cash-out Limit
  Effective January 1, 2024, the Act increases the cash-out limit for involuntary distributions from $5,000 to $7,000.
- Early Distributions for Emergency Expenses
  Effective for distributions made after December 31, 2023, the 10% tax on early distributions does not apply for distributions related to certain emergency expenses (unforeseeable or immediate financial needs relating to personal or family emergency expenses). Participants would be allowed one distribution per year up to $1,000, and the employee would have the option to repay the distribution within three years. No further emergency distributions are permissible during the three year repayment period unless repayment occurs.
- Early Distributions for Domestic Abuse Survivors
  Effective for distributions made after December 31, 2023, the 10% tax on early distributions does not apply for distributions for domestic abuse survivors. The participant can self-certify that they have experienced domestic abuse, and can withdraw the lesser of $10,000 (indexed for inflation) or 50% of the participant's account.
- Saver's Matching Contribution
  Effective for tax years beginning after December 31, 2026, the Act replaces the existing tax credit for participant contributions to IRAs or retirement plans with a federal matching contribution that must be deposited into the taxpayer's IRA or retirement plan. The match is 50% of the IRA or retirement plan contribution up to $2,000 per individual, and phases out between $41,000 and $71,000 for taxpayers filing a joint return ($20,500 to $35,500 for single taxpayers).
- Improved Coverage for Part-Time Workers
  The SECURE Act added a requirement that employers needed to allow long-term part-time employees to participate in the 401(k) plan if the long-term part-time employee completes either one year of service at 1,000 hours or three consecutive years of service at 500 hours. The three year requirement is reduced to two years effective for plan years beginning after December 31, 2024. The three year requirement is still effective for plan years prior to the effective date.
- Rainy Day Roth Accounts
  In an effort to increase savings, employers may allow non-highly compensated employees to establish emergency savings accounts under qualified plans. Employers may automatically enroll employees into these accounts at no more than 3% of salary, and the amount is capped at $2,500. The contributions are made on a Roth-like basis, and are treated as elective deferrals for purposes of matching contributions with an annual cap set at the maximum account balance. Generally, withdrawals from the account are not subject to any fees or charges on the basis of the withdrawal. On separation from service, employees may cash out the savings accounts or roll it into a Roth IRA or other defined contribution plan.
- Retirement Savings Lost and Found
  The Department of Labor will create a national online searchable lost and found database for Americans'

retirement plan accounts. The Act directs the Department of Labor to create the database no later than two years after the enactment of the Act.

- Expansion of EPCRS and Recover of Retirement Plan Overpayments
  The Act directs the IRS to update the Employee Plans Compliance Resolution System (EPCRS) to, allow for more types of errors to be corrected under the self-correction program and to exempt certain failures to make required minimum distributions from the excise tax, among other things. The Act also gives plan fiduciaries latitude to decide not to recoup overpayments that were mistakenly made to retirees, and, if the fiduciaries choose to recoup overpayments, certain limitations and protections are put in place to safeguard innocent retirees.
- Optional Employer Roth Contributions
  The Act allows employers to make employer matching or non-elective contributions on a Roth basis, effective on the date of the Act.
- Student Loan Payment Matching Contributions
  The Act allows employers to make matching contributions to retirement plans based on employees' student loan payments, effective January 1, 2024.
- Enhanced Investments in 403(b) Plans
  The Act allows 403(b) custodial accounts to participate in group/collective investment trusts with other tax-preferred savings plans and IRAs, effective as of the date of the Act.
- Pooled Employer 403(b) Plans
  The Act expanded the pooled employer plan concept from the SECURE Act to 403(b) plans, and directs the Department of Treasury to issue regulations providing relief from the "one bad apple" rule for 403(b) plans.
- Mandatory Automatic Enrollment in New 401(k) & 403(b) Plans
  Effective for plan years beginning after December 31, 2024, any new 401(k) or 403(b) plan are required to automatically enroll participants upon becoming eligible (and the employees may opt out of coverage). The initial percentage must be at least 3% and no more than 10%, and is increased by 1% annually up to a plan-set maximum of at least 10% but no more than 15%. This requirement does not apply to current 401(k) and 403(b) plans, small businesses with 10 or fewer employees, new employers that have been in existence for fewer than three years, church plans and governmental plans.

This is only a summary of some of the provisions in the Act that may affect plan sponsors. These changes will likely impact most retirement plans, so plan sponsors and administrators will need to monitor future developments from the Department of Treasury and the IRS.

For more information on Congress' SECURE 2.0, please contact Sam Butler, Jeff Cairns, Elizabeth Delagardelle, Tom Dowling, Audrey Fenske, Phil McKnight, Mark Wilkins or the Stinson LLP contact with whom you regularly work.

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