

TOP 10 PROVISIONS IN SECURE 2.0

December 2022

CONGRESS RECENTLY ENACTED LANDMARK RETIREMENT LEGISLATION KNOWN AS SECURE 2.0 THAT WILL INCENTIVIZE INDIVIDUALS TO SAVE FOR RETIREMENT, WHILE INCREASING ACCESS TO WORKPLACE PLANS. THE NEW LAW INCLUDES A NUMBER OF PROVISIONS INTENDED TO BENEFIT INDIVIDUALS AS WELL AS SMALL BUSINESS OWNERS.

BELOW IS A SUMMARY OF THE TOP 10 PROVISIONS.

ENHANCEMENT OF TAX CREDITS FOR SMALL BUSINESSES STARTING AND MAINTAINING A RETIREMENT PLAN

The current tax credit available for small businesses that adopt a new qualified retirement plan will be enhanced beginning in 2023. Employers with up to 50 employees will be eligible for a credit equal to 100% of the amount contributed by the employer, up to \$1,000 per employee. The employer receives a credit equal to 100% in years one and two, then 75% in the third year, 50% in the fourth year and 25% in the fifth year.

Small businesses with 51 to 100 employees are also eligible for this tax credit, which phases out based on the number of employees exceeding 50 during the preceding taxable year. Employees earning more than \$100,000 per year are excluded, and employers cannot claim a credit for contributions on their behalf.

In addition, the current three-year start-up credit – generally equal to 50% of plan expenses, up to a cap of up to \$5,000 – is increased to 100% of plan expenses, up to a cap of \$5,000 for employers with up to 50 employees.

CHANGES TO REQUIRED MINIMUM DISTRIBUTIONS

The SECURE Act of 2019 raised the age for RMDs from 70½ to 72. SECURE 2.0 further raises the RMD age from 72 to 73 in 2023, and 75 in 2033. Earlier drafts of SECURE 2.0 had a phase-in period, with a gradual increase to 75 by 2033; the final version of the bill does not include a phase in and will simply raise the RMD age from 73 to 75 in 2033.

Additionally, SECURE 2.0 reduces the penalty tax for failures by an individual to take the minimum distribution from 50% to 25%. Further, if the failure is corrected in a timely manner, the excise tax is reduced from 25% to 10%. These changes are effective for 2023.

CATCH-UP CONTRIBUTION INCREASE AND CHANGES FOR EARNERS OVER \$145,000

There are two significant changes to catch-up contributions included in SECURE 2.0. First, effective in 2024, all catch-up contributions for individuals earning more than \$145,000 per year (indexed) must be made on a Roth, or after tax, basis. This does not apply to SIMPLE plans.

Second, individuals between the ages of 60 and 63 will be eligible for a higher catch-up contribution limit beginning in 2025. Current law limits catch-up contributions to \$7,500 (except for SIMPLE plans, which limit to \$3,500). Under SECURE 2.0, effective in 2025, individuals will be able to contribute the greater of \$10,000 (indexed) or 150% of the regular catch-up (which would be \$11,250 in 2023). For SIMPLE plans, individuals will be able to contribute the greater of \$5,000 or 150% of the regular SIMPLE catch-up (which would be \$5,520 in 2023).

SELF-CORRECTION OF INADVERTENT PLAN AND IRA VIOLATIONS WITHOUT SUBMISSION TO THE IRS

Effective immediately, all inadvertent plan violations may be self-corrected under the IRS' Employee Plans Compliance Resolution System (EPCRS) without a submission to the IRS. The rule does not apply if the IRS discovers the violation on an audit, or if the self-correction is not completed within a reasonable period after a failure is identified.

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MATCHING CONTRIBUTIONS FOR STUDENT LOAN PAYMENTS

Recognizing that many individuals are not able to contribute to workplace plans in order to make student loan payments, SECURE 2.0 includes a provision aimed at encouraging younger workers to begin saving for retirement. Beginning in 2024, employers will be permitted to make matching contributions under a 401(k), 403(b) or SIMPLE IRA plan based on a participant's student loan repayments. Government employers would also be permitted to make matching contributions in a section 457(b) plan or another plan with respect to such repayments. This provision is effective for 2024.

REQUIRED AUTO-ENROLLMENT AND AUTO-ESCALATION FOR MOST NEW PLANS

Beginning in 2025, all new 401(k) and 403(b) plans will be required to include automatic enrollment for all eligible participants at a minimum of 3% and maximum of 10% of eligible compensation, and automatic escalation at one percentage point per year up to at least 10% and a maximum of 15%. Plans in existence before the date of enactment would be grandfathered and not subject to these requirements. There is also an exemption for government plans, church plans, employers with 10 or fewer employees, and new businesses within the first three years of operation. Additionally, the bill does not require an employer to have a plan but instead applies only to employers deciding to start a plan.

ALLOWING SIMPLE AND SEP CONTRIBUTIONS TO BE MADE ON A ROTH BASIS

Effective for tax year 2024, SIMPLE and SEP contributions for both employees and employers can be made on a Roth basis. The employee must elect for Roth treatment.

TWO NEW WAYS TO SAVE FOR EMERGENCIES THROUGH A 401(k) PLAN

SECURE 2.0 enables emergency savings accounts to be created within 401(k) plans, which will allow employees to save for emergencies and make withdrawals without penalty. There is a cap of \$2,500 on the emergency savings account, and contributions must be made on a Roth basis so that distributions can be nontaxable (regardless of when

distributed). Only employee contributions can be made towards the emergency savings account, however employers must match the contributed amount into the standard portion of the plan, not the emergency savings account, at the same rate they match regular contributions to the plan. This provision is effective for 2024. Policymakers intended for this proposal to support individuals who want to save, but are fearful of having assets tied up in a retirement account and being unable to access them without penalty.

Additionally, there is a provision that will no longer subject emergency distributions from retirement plans (excluding DB plans) or IRAs to the 10% early distribution tax. There will be a limit of one emergency distribution per year and that distribution cannot exceed the lesser of \$1,000 (not indexed) or the excess of the individual's vested benefit over \$1,000 (not indexed). This provision is also effective for 2024.

PERMITTING ALL EMPLOYER CONTRIBUTIONS TO BE OFFERED TO EMPLOYEES ON A ROTH BASIS

Effective immediately, employers can allow employees to elect for some or all of their vested matching and non-elective contributions to be treated as Roth contributions under a 401(k), 403(b) or governmental 457(b) plan.

ROLLOVER OF EXCESS 529 ASSETS TO ROTH IRAS

Beginning in 2024, excess assets in a 529 qualified tuition program will be eligible for a tax-free rollover to a Roth IRA. The beneficiary of the 529 account and the Roth IRA must be the same, and the 529 account of the beneficiary must have been maintained for at least 15 years. The rollover would be subject to the lesser of (1) the regular Roth IRA limits (without the income limits) or (2) the aggregate amount contributed to the 529 account over the previous five years (plus earnings). The rollovers would also be subject to a per-beneficiary lifetime limit of \$35,000. This provision is aimed at supporting middle income savers who have been making contributions to a 529 plan in lieu of saving for their own retirement.

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