

TOP 10 PROVISIONS IN SECURE ACT AND SECURE 2.0

The Setting Every Community Up for Retirement Enhancement (SECURE) Act was enacted in December 2019, and was followed by additional provisions in SECURE 2.0 in December 2022. Taken together, the laws incentivize individuals to save for retirement while increasing access to workplace plans, benefitting individuals and small-business owners.

Below are summaries of the Top 10 provisions of each.

SECURE Act

- 1. Open Multiple Employer Plans / Pooled Employer Plans** – The SECURE Act allows unrelated small employers to band together in “open” 401(k) multiple-employer plans (MEPs; also referred to as pooled employer plans (PEPs)). This reduces the costs and administrative duties that each employer would otherwise bear alone. The Act also eliminates the “one-bad-apple” rule under which a violation by one employer participating in a MEP can trigger severe penalties for the compliant employers in the MEP.
- 2. Safe Harbor 401(k) Plans and Timing of Plan Amendments and Adoptions** – The SECURE Act very generally permits employers to add a safe harbor feature to their existing 401(k) plans during the year; such additions are even permitted very late in the year and after the end of the year if the employer contributes at least 4 percent of employees’ pay instead of the regular 3 percent. It also allows employers to adopt a plan for a taxable year as long as the plan is adopted by the due date for the employer’s tax return for that year (including extensions).
- 3. Startup Credit for Small Employer Plans and New Credit for Small Employer Plans Adopting Automatic Enrollment** – The SECURE Act increases the business tax credit for plan startup costs to make setting up retirement plans more affordable for small businesses. The tax credit will increase from the current cap of \$500 to up to \$5,000 in certain circumstances. It also encourages small-business owners to adopt automatic enrollment by providing a further \$500 tax credit for three years for plans that add auto-enrollment. [As described below, SECURE 2.0 provides enhanced credits effective in 2023.](#)
- 4. Post-70½ IRA Contributions** – The prohibition on making deductible contributions to a traditional IRA after age 70½ is repealed.
- 5. Long-Term Part-Time Employees** – The SECURE Act generally requires employers to allow long-term part-time workers to make elective deferrals under defined-contribution plans. Eligible employees will have completed at least 500 hours of service each year for three consecutive years, and are age 21 or older. Under SECURE 2.0, the required service requirement is reduced to two consecutive years, beginning in 2025. However, these participants can be excluded from employer contributions, nondiscrimination and top-heavy requirements if they haven’t worked 1,000 hours in a 12-month eligibility period.
- 6. Plan Withdrawals for Birth or Adoption** – The SECURE Act allows an exception to the 10 percent penalty for birth or adoption. New

parents can now withdraw up to \$5,000 from a retirement account within a year of a child's birth or adoption without the 10 percent penalty those younger than 59 ½ would normally owe. The distribution, which is still subject to tax, can be repaid to a retirement account. SECURE 2.0 restricts the permitted repayment period to 3 years.

- 7. Increased Required Beginning Date** – The SECURE Act increases the age triggering the required beginning date for plans and IRAs to 72. As described in #2 below, SECURE 2.0 provides additional age increases, beginning in 2023.
- 8. Consolidated Form 5500 Reporting for Similar Plans** – The SECURE Act offers a consolidated Form 5500 for certain defined- contribution plans with a common plan administrator to reduce administrative costs, but also increases penalties for failure to file retirement plan returns, such as Forms 5500, required notifications of registration changes and required withholding notices.

- 9. Fiduciary Safe Harbor for Selecting Annuity Providers** – The SECURE Act creates a safe harbor that employers can use when choosing an annuity provider to provide annuity distributions under a defined-contribution plan.
- 10. Updated: "Stretch" RMD** – The SECURE Act imposes a 10-year distribution limit for most non-spouse beneficiaries to spend down inherited IRAs and defined-contribution plans. Before passage of the Act, withdrawals from inherited accounts could be stretched over the life of beneficiaries to mitigate taxes. Under the regulations that were proposed by IRS in 2022 and finalized in 2024, RMDs are required to continue throughout the 10-year period in cases where the 10-year rule is triggered after RMDs have already commenced. The IRS provided excise tax relief for 2021, 2022, 2023, and 2024 for RMDs that would have been required during the 10-year period under the proposed regulations. However, following issuance of the final regulations, such excise tax relief will not be provided for 2025.

SECURE 2.0

- 1. 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.

- 2. 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.
- 3. 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, all catch-up contributions for individuals earning more than

\$145,000 per year (indexed) will be required to be made on a Roth, or after tax, basis. This does not apply to SIMPLE plans. The IRS has delayed the effective date of this requirement from 2024 to 2026.

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). Effective in 2025, individuals in the affected age range will be able to contribute the greater of \$10,000 (indexed) or 150% of the regular catch-up (which is \$11,250 in 2025). For SIMPLE plans, these individuals will be able to contribute the greater of \$5,000 or 150% of the regular SIMPLE catch-up (which is \$5,520 in 2025).

- 4. Self-Correction of Inadvertent Plan and IRA Violations Without Submission to the IRS -** SECURE 2.0 directs the IRS to expand the Employee Plans Compliance Resolution System (EPCRS) to permit self-correction of all inadvertent plan violations 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. The IRS has issued preliminary guidance that continues to restrict the errors eligible for self-correction until the EPCRS is updated, including a prohibition on corrections by IRA custodians.

5. Updated: 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. 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. Although this

provision is effective for 2024, the IRS did not issue preliminary guidance until August 2024, and has not yet issued final guidance.

- 6. 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, SECURE 2.0 does not require an employer to have a plan but instead applies only to employers deciding to start a plan.

- 7. Allowing SIMPLE and SEP Contributions to Be Made on a Roth Basis -** Effective in 2023, SIMPLE and SEP contributions for both employees and employers can be made on a Roth basis. The employee must elect for Roth treatment. The IRS has issued preliminary, but not final, guidance that will assist in implementation of this provision.
- 8. 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. Although this provision is effective

for 2024, the IRS has issued only preliminary guidance necessary for implementation. 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.

9. **Permitting All Employer Contributions to Be Offered to Employees on a Roth Basis -** 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. Although this

provision was effective in 2023, the IRS did not issue preliminary guidance until December 2023, and has not yet issued final guidance.

10. **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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