



## **SECURE ACT 2.0 OVERVIEW OF CERTAIN PROVISIONS**

The SECURE 2.0 Act of 2022 (“**SECURE 2.0**”), signed into law by President Biden on December 29, 2022, is another round of retirement reforms that began with the original SECURE Act (*i.e.*, the “Setting Every Community Up for Retirement Enhancement Act”) passed in 2019. SECURE 2.0 is a combination of three separate bills seeking to broaden retirement savings among Americans<sup>1</sup> that is memorialized in “Division T” of the Consolidated Appropriations Act of 2023.<sup>2</sup> Some of its provisions are effective now and others do not take effect until future years. In addition, some of its provisions mandate changes to employer’s plans while others allow optional changes.

The following is a summary of certain provisions of SECURE 2.0, categorized by type of plan, that we feel may be more relevant to our clients:

### **DEFINED CONTRIBUTION PLANS**

#### *Mandatory Expansion of 401(k)/403(b) Automatic Enrollment (Title I, Section 101)*

Starting in 2025, businesses adopting a new section 401(k) or 403(b) plan must automatically enroll eligible employees to start contributing at least 3% and not more than 10% of their compensation and automatically increase contributions 1% per year up to a maximum of 10% to 15%. Participants can still opt out of auto-enrollment and auto-escalation. All existing plans are grandfathered and do not have to meet these requirements. In addition, employers with 10 or fewer employees, new businesses in existence for less than three years, church plans and governmental plans are exempt from these rules.

#### *Higher Catch-Up Contributions (Title I, Section 109)*

Starting January 1, 2025, plan participants who are age 60 through 63 years old (*i.e.*, their attained age during the tax year is at least 60 and not yet 64) will be able to make catch-up contributions up to the greater of \$10,000 or 50% more than the standard catch-up amount annually to an employer plan, or \$5,000 or 50% more than the standard catch-up amount annually to a SIMPLE plan. Both of the limit amounts are indexed to inflation. (The catch-

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<sup>1</sup>Prior to reconciling the final bill, the package was comprised of three bills: the Securing a Strong Retirement Act (H.R. 2954) approved by the House of Representatives, the Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg (RISE & SHINE) Act approved by the Senate Health, Education, Labor and Pension (HELP) Committee, and the Enhancing America Retirement Now (EARN) Act, also approved by the Senate Finance Committee.

<sup>2</sup>A copy of the text of the final legislation, including all provisions, can be accessed [here](#). SECURE 2.0 starts on page 2046 of the document.



up amount for participants age 50 and older in 2023 is currently \$7,500 for employer plans or \$3,500 for SIMPLE plans.)

#### *Student Loan Matching Contributions Permitted (Title I, Section 110)*

Starting in 2024, employers will be permitted to "match" *qualified employee student loan payments* with matching contributions under a section 401(k) or 403(b) plan, a SIMPLE IRA or a governmental section 457(b) plan (as if the loan payments were elective deferrals into the plan). Employers are not required to adopt this provision—it is up to the employer to determine if it desires to utilize this option. In addition, if adopted, there will be a new nondiscrimination test just for those employees receiving these matching payments.

#### *Employers are Permitted to “Bribe” Employees to Save For Retirement (Title I, Section 113)*

Starting in 2023, employers may now give employees a *de minimis* financial incentive, not paid from plan assets (e.g., a \$10 gift card) to boost employee participation in their section 401(k) plans.

#### *Emergency 401(k) and IRA Withdrawals Can Be Allowed Without Penalty (Title I, Section 115)*

Starting in 2024, employers with defined contribution retirement plans will be permitted to add a withdrawal provision for unforeseeable or immediate financial needs relating to personal or family emergency expenses of up to \$1,000 once a year (an “emergency withdrawal”), subject to certain timing availability limitations. If a participant takes an emergency withdrawal, the participant will not be required to pay the 10% early withdrawal penalty but must pay the ordinary tax on a distribution of tax-deferred money. In addition, the participant would also be able to repay the \$1,000 back to the plan (and presumably get a tax deduction for doing so) within three years. A participant cannot take another emergency withdrawal during the three-year repayment period, unless the emergency withdrawals is fully repaid.

#### *Allow Employers to Put More into SIMPLE IRA and 401(k) Plans (Title I, Section 116)*

Starting in 2024, the possible employer contribution in a SIMPLE plan is raised from 2% of compensation (or 3% of compensation if in the form of a match) to 10% of compensation or \$5,000 (adjusted for inflation), whichever is less.

#### *SIMPLE IRA and 401(k) Contribution Limit Increases (Title I, Section 117)*

Starting in 2024, SIMPLE plan elective deferral contribution limits go up by 10% (including catch-up contributions). However, an employer with 26 to 100 employees must provide a non-matching contribution of at least 3% of compensation or a matching contribution of 4% of compensation in order for the SIMPLE plan to qualify for that increase.

### *Cash-Out IRA Portability Permitted (Title I, Section 120)*

Starting 12 months after enactment, retirement plan service providers may offer plan sponsors automatic portability services, which could include the automatic transfer of an employee's low balance default IRA (established in connection with a distribution from a former employer's plan) into a new employer plan when they change jobs. The employee can affirmatively elect to keep his funds in the default IRA instead of the automatic transfer.

### *Introduction of Starter 401(k) Plans (Title I, Section 121)*

Starting in 2024, a starter section 401(k) plan (or safe-harbor section 403(b) plan) can be started by an employer that does not currently offer a retirement plan. The starter plan will have a deferral contribution limit equal to the IRA contribution limits (\$6,500 in 2023 with \$1,000 catch-up limits) and must default-enroll employees with a 3% to 15% of compensation elective contribution.

### *Part-Time Employees Must Be Eligible for 401(k) After 2 Years (Title I, Section 125)*

Starting in 2025, employees must become eligible to participate in a section 401(k)/403(b) plan for elective deferral purposes after no more than one year of full-time work (1,000+ hours) or two years of part-time work (500+ hours per year). Previously, it was three years for part-timers.

### *Pension-Linked Emergency Savings Accounts May Be Added (Title I, Section 127)*

Starting in 2024, employers can establish new tax-free accounts for their *non-highly compensated employees* called pension-linked emergency savings accounts. Employers *can automatically opt* employees in with up to 3% of their compensation. The first \$2,500 put into this account by the employee sits there as an emergency fund. Once it hits \$2,500, the contributions can stop or additional contributions go into the employee's Roth 401(k) plan account. Employers can match the contributions 1:1 up to \$2,500. Up to four no-fee, no penalty tax withdrawals may be permitted from the account each year. At separation, the money can be taken as cash (penalty-free), rolled into a Roth IRA, or moved into the Roth 401(k) plan account. This is a complex provision that will likely have lengthy Treasury and Labor regulations, so implementation by 2024 may be optimistic.

### *403(b)s Can Now Use Collective Investment Trusts (Title I, Section 128)*

Starting as of the date of enactment (but not really), section 403(b) plans may use collective investment trusts (“*CITs*”). Currently, CITs may be used for section 401(a) plans, but section 403(b) plans are limited to annuities and mutual funds. Note that section 403(b) plans may not implement a CIT immediately as there are still securities law issues that reportedly did not make it into the final bill that must be resolved prior to instituting a section 403(b) plan CIT.

*RMD Life Annuities (Title I, Section 201)*

Starting in 2023, certain barriers to the availability of certain life annuities in qualified plans and IRAs due to the actuarial test required in calculating RMDs are eliminated. Previously, certain features were not permitted with a lifetime annuity inside of a retirement plan or IRA because it would not adhere to the strict RMD tests. For example, an annuity with a benefit increase of 2% a year could fail the RMD test. The new rule allows annuities to offer an increasing payment that is a “constant percentage” increase at least annually and no more than 5% increase a year. Also, under the new rule, an individual may choose a lifetime income annuity with a return of premium at death benefit and still meet the RMD rules. The rule does not require employers to provide these types of annuities under their plans, it simply permits these types of annuities to be provided without failing the actuarial tests under the RMD regulations.

*Provides Flexibility and Protections When Retirement Plan Overpayment Errors Occur (Title III, Section 301)*

Starting in 2023, plan administrators are no longer required to recoup mistaken payments, and those who received overpayments get additional protections, including protecting rollovers of those overpayments.

*Allows for Easier Retirement Plan Error Correction (Title III, Section 305)*

Starting in 2023, the Employee Plans Compliance Resolution System must be amended to make it easier to correct many retirement plan contribution and distribution errors without involving the IRS.

*Eliminates “First Day of Month” Rule for Governmental 457(b) Plans (Title III, Section 306)*

Starting in 2023, governmental section 457(b) plans will no longer have to require participants to change contribution rates before the first day of the month, even if the money for the contribution was not available until later in the month.

*Change in Retirement Plan Top-Heavy Testing (Title III, Section 310)*

Starting in 2024, the top-heavy nondiscrimination test becomes more lenient for employers to encourage them to allow those under 21 or with less than one year of service to participate in their retirement plans.

*Qualified Birth and Adoption Distributions Repayment Period (Title III, Section 311)*

Effective immediately and (perhaps) retroactively, the period to pay back qualified birth and adoption distributions made to participants must be limited to three years. Prior provisions did not have a time limit to pay back qualified birth and adoption distributions.



*Employees Can Self-Certify Hardship for Retirement Plan Withdrawal Purposes (Title III, Section 312)*

Starting in 2023, employees can self-certify hardships for purposes of hardship withdrawals under section 401(k) plans. This is an administrative clarification.

*Domestic Abuse Survivors' Penalty-Free Withdrawal (Title III, Section 314)*

Starting in 2024, another exception to the 10% early withdrawal penalty rule will be added for domestic abuse survivors. The limit under the domestic abuse exception is \$10,000 or 50% of the balance, whichever is less. The amount of the withdrawal can also be repaid (with a refund of taxes paid) for a period of three years. The limit is adjusted annually for inflation.

*Sole Proprietor 401(k) Plan Deferrals (Title III, Section 317)*

Starting in 2023, new section 401(k) plans sponsored by a sole proprietor or single member limited liability company can allow certain deferral contributions up to the date of the employee's tax return filing date for the first year of the plan.

*Lifecycle Funds Can Be Compared to Lifecycle Benchmarks (Title III, Section 318)*

Starting no later than two years after the date of enactment, lifecycle funds no longer have to be compared to a broad market index (this previously was required even though the funds included bonds and other assets). Disclosure statements will now allow a more appropriate comparison.

*Eliminating Notices and Disclosures for Unenrolled Employees (Title III, Section 320)*

Starting in 2023, employers will no longer be required to send certain section 401(k) plan paperwork to employees who have not enrolled in the section 401(k) plan.

*No More Roth 401(k) RMDs (Title III, Section 325)*

Starting in 2024, Roth accounts in qualified defined contribution plans will be exempt from the RMD requirements.

*Terminal Illness Exception to 10% Early Withdrawal Penalty (Title III, Section 326)*

Starting in 2023, another new exception to the 10% early withdrawal penalty will be added for terminal illness.

*Disaster Retirement Plan Withdrawal Rule Changes (Title III, Section 331)*

Effective with respect to disasters occurring on or after January 26, 2021, an individual may withdraw up to \$22,000 from a retirement plan or IRA penalty-free in the event of a



federal disaster. Taxes on that withdrawal can be spread over three years and can also be repaid into a retirement account. An individual may also repay any money the individual withdrew for a home purchase. Employers will be permitted to allow a larger amount to be borrowed for a longer period of time by affected plan participants from their accounts in a disaster, too.

*Replace SIMPLE IRA Plan with Safe Harbor 401(k) (Title III, Section 332)*

Starting in 2024, employers are permitted to replace SIMPLE IRA plans with safe harbor SIMPLE or other section 401(k) plan (i.e., requiring mandatory employer contributions) during a plan year.

*Long-Term Care Premium Exception to 10% Early Withdrawal Penalty (Title III, Section 334)*

Starting three years after enactment, an employer plan may permit an individual to withdraw up to \$2,500 per year from the plan to pay for high quality long-term care insurance premiums without paying the 10% early withdrawal penalty.

*Safe Harbor for Deferral Failure Corrections (Title III, Section 350)*

Starting in 2024, employers will be permitted to correct, without penalty, reasonable errors in administering automatic enrollment and escalation provided the corrections are made within 9½ months after the end of the plan year in which the errors occurred.

*Roth SIMPLE and SEP IRAs (Title VI, Section 601)*

Starting in 2023, individual can make Roth contributions to SIMPLE and SEP IRAs. In addition, individuals can elect to treat employer contributions to a SEP IRA as Roth (in whole or in part).

*401(k)/403(b) Hardship Withdrawal Rule Standardization (Title VI, Section 602)*

Starting in 2024, like section 401(k) plans, hardship withdrawals under section 403(b) plan no longer have to come only from employee contributions.

*Roth Nature of Catch-Up Contributions for High Earners (Title VI, Section 603)*

Starting in 2024, for individuals who earn more than \$145,000 (adjusted annually for inflation) in the prior calendar year, all catch-up contributions at age 50 or older will need to be made to a Roth account in after-tax dollars. Individuals who earn \$145,000 or less (as adjusted) will be exempt from the Roth requirement.

*Match and Nonelective Contributions Can Now Be Roth, Too (Title VI, Section 604)*

Starting in 2023 (although it may take time for plan providers to offer this and for payroll systems to be updated), employers will be able to provide employees the option of



receiving vested matching and nonelective contributions to Roth subaccounts of a section 401(k), 403(b), or 457(b) plan. This includes matches of payments on student loans. These contributions will be taxable to the employee and immediately vested.

## **DEFINED BENEFIT PLANS**

### *Pension Risk Transfers (Title III, Section 321)*

The DOL is directed to review the current guidance governing pension risk transfers to determine if amendments are necessary and to report its findings to Congress.

### *Mortality Table Correction (Title III, Section 335)*

The Department of Treasury is directed to amend the regulations affecting minimum funding rules for pension plans to reflect that pension plans are not required to assume mortality improvements at any age greater than 0.78%. This provision, of course, is of primary interest to the pension plan actuaries.

### *Financial Options Risk Mitigation Act (Title III, Section 342)*

Pension plan administrators will be required to provide more information to participants deciding between taking a pension or a lump sum—such as how the lump sum was calculated. Final rule to be issued in a future year.

### *Defined Benefit Plan Annual Funding Notices (Title III, Section 343)*

Starting in 2024, pension plans are going to have to inform participants of their underfunded status more clearly on their annual funding notices.

### *Hybrid Cash Balance Plan Adjustment (Title III, Section 348)*

Starting in 2023, a technical adjustment is added for certain types of cash balance plans to prohibit the backloading of benefit accruals. The provision will allow plan sponsors of these types of cash balance plans to provide larger pay credits to older, longer-service employees.

### *PBGC Premiums (Title III, Section 349)*

Starting immediately, the PBGC variable rate premium for defined benefit plans, which has been increasing in recent years, is locked at a flat \$52 for each \$1,000 of unfunded vested benefits.



### *Sunset Date Change for Retiree Health Benefit Payments (Title VI, Section 606)*

The sunset date for allowing assets from overfunded pension plans to be used to pay retiree health and life insurance benefits is extended to the end of 2032 (subject to certain limitations).

## **ALL TYPES OF PLANS**

### *Required Minimum Distribution Age Increased (Title I, Section 107)*

Starting January 1, 2023, the age at which participants in qualified plans and traditional individual retirement accounts (“**IRAs**”) must start taking required minimum distributions (“**RMDs**”) is increased from age 72 to age 73. In addition, starting in 2033, the age at which RMDs must begin will be increased to age 75.

### *RMD Penalty Cut in Half (Title III, Section 302)*

Starting January 1, 2023, the steep penalty for failing to take an RMD will decrease to 25% of the RMD amount not taken, from the current penalty of 50%. For IRA owners, the penalty will be reduced to 10% if the account owner withdraws the RMD amount previously not taken and submits a corrected tax return in a timely manner.

### *Increases Dollar Limit for Involuntary Distribution (Title III, Section 304)*

Starting in 2024, the involuntary cash-out limit from an employer plan is increased to \$7,000 so when an employee terminates employment with a plan account balance or accrued benefit of between \$1,000 and \$7,000, the employer can involuntarily cash-out the employee and roll the amount into an IRA. If the account balance or accrued benefit is above \$7,000, the employee must consent to taking the money out of the plan. Previously, the limit was \$5,000 instead of \$7,000.

### *Beneficial Plan Amendments Now Allowed Until Tax Return Due Date (Title III, Section 316)*

Starting in 2024, employers can now add provisions to their retirement plans that benefit employees until the tax return due date rather than the end of the plan year in which the amendment is effective.

### *Substantially Equal Periodic Payments (Title III, Section 323)*

Starting in 2024 (but immediately in the case of annuity distributions), substantially equal life expectancy periodic payment rules are clarified so that such payments will continue to be exempt from the 10% additional tax on early distributions, including in the case of a rollover of the account, an exchange of the annuity, or an annuity that satisfies the RMD rules.





### *Rollover Simplification (Title III, Section 324)*

The Treasury has been directed to simplify and standardize the rollover process and issue model forms for direct rollovers to be released no later than January 1, 2025.

### *Surviving Spouse Can Elect to be Treated as Employee for RMDs (Title III, Section 327)*

Starting in 2024, the surviving spouse can now elect to be treated as the employee with respect to RMDs.

### *Paper Benefit Statement Must Be Provided (Title III, Section 338)*

Starting in 2026, unless the participant opts out, an employer defined contribution plan must send them their benefit statement annually in paper form and an employer defined benefit plans must send them every three years. (For defined contribution plans that require quarterly statements, the statements for the other three quarters may continue to be sent in electronic form.)

### *Paperwork Simplification for Employer Plans (Title III, Section 341)*

Withing three years after enactment (i.e., December 28, 2025), the Departments of Treasury and Labor are to amend regulations permitting employers to combine certain required notices into one form.

## **IRAs**

### *Indexing IRA Catch-Up Limit (Title I, 108)*

Starting in 2024, the IRA catch-up limit for individuals age 50 and older is inflation-indexed. IRAs currently have a \$1,000 catch-up contribution limit for individuals age 50 and over.

### *529 Plan to Roth IRA Rollovers Now Allowed (Title I, Section 126)*

Starting in 2024, once a 529 plan has been established for 15 years, 529 plan beneficiaries can roll up to \$35,000 from the 529 plan to a Roth IRA (subject to annual Roth contribution limits and the aggregate lifetime limit of \$35,000). This is not an addition to their annual contribution but a replacement for it (that is, the rollover is treated as a contribution towards the annual Roth IRA contribution limit). This will not work for Backdoor Roth IRA contributions.

### *IRA Charitable Donations Expanded (Title III, Section 307)*

For tax years beginning after the date of enactment, the IRA charitable distribution provision is expanded to allow for one-time \$50,000 distributions to charities through charitable gift annuities, charitable remainder unitrusts and charitable remainder annuity

trusts. In addition, the annual charitable distribution limit of \$100,000 shall now be indexed for inflation.

*Clarification of Statute of Limitations for Excise Tax on Excess Contributions and Certain Accumulations (Title I, Section 313)*

Starting immediately, the statute of limitations for excess contributions is six years from the date the taxpayer files an individual tax return (Form 1040) for an excess contribution and three years from the date the taxpayer files an income tax return (Form 12040) for failure to make a required minimum distribution. There is an exception from this six-year rule for excess contributions that arise out of a bargain sale to the IRA. Prior to SECURE 2.0, the statute of limitations for excise taxes imposed on excess contributions or required minimum distribution failures start running as of the date that a specific excise tax return (Form 5329) is filed for the violation. If the taxpayer fails to file Form 5329, the period of limitations fails to start and taxpayers can owe a significant amount due to the accumulation of interest and penalties. The new rule provides finality for taxpayers in the administration of these excise taxes.

*IRA Prohibited Transactions (Title III, Section 322)*

Starting in 2023, in the case of an individual with multiple IRAs, prohibited transactions in an IRA will be attributed only to the specific IRA at issue.

*Elimination of Additional Tax on Excess IRA Contributions (Title III, Section 333)*

Starting immediately (and retroactively in certain cases), excess IRA contributions and earnings are exempt from the 10% additional tax on early distributions. Currently, a corrective distribution is required if too much is contributed to an IRA. The corrective distribution includes the excess contribution and any earnings allocable to that contribution. Previously, the amount distributed was subject to the 10% additional tax on early distributions.

## **MISCELLANEOUS MATTERS**

*Employers Can Provide a SEP for Domestic Employees (e.g., Nannies) (Title I, Section 118)*

Starting in 2023, domestic employees can now be provided a SEP IRA by their employers.

*Qualified Longevity Annuity Contracts (“QLACs”) Expanded (Title I, Section 202)*

A qualified longevity annuity contract (QLAC) is a special deferred income annuity that allows individuals to reduce their RMDs for several years (QLACS normally beginning paying at age 85). QLACs are funded with premium amounts paid to insurers, which at the time of payment are not considered for RMD calculation purposes. For contracts purchased or received in an exchange on or after the date of enactment of SECURE 2.0,



the limit for these purposes has been raised to \$200,000. Prior to SECURE 2.0, the premium amounts that could be placed into a QLAC was the lesser of \$125,000 or 25% of the account balance. In addition, free-look periods are permitted up to 90 days and certain spousal issues were clarified with respect to contracts purchased or received in an exchange on or after July 2, 2014.

*Special Needs Trust RMDs (Title III, Section 337)*

Starting in 2023, special needs trusts that are established for beneficiaries with disabilities are permitted to provide for remainder beneficiaries that are charitable organizations.

### **TIMING OF AMENDMENTS**

Plan amendments that are required to meet the requirements of SECURE 2.0 must be made on or before the last day of the first plan year beginning on or after January 1, 2025 (2027 for governmental plans). In addition, the deadline for amendments under the original SECURE Act, CARES Act and Taxpayer Certainty and Disaster Relief Act of 2020 conform to these new dates.

### **ADDITIONAL QUESTIONS**

Should you have any immediate questions or need more information concerning the provisions of SECURE 2.0 and how it may affect your plan(s), please contact [Robert T. Mashburn, Jr.](#), [Randye C. Snyder](#), [Leon H. Rittenberg III](#), or [Thomas J. McGoey II](#).