

THE SECURE ACT 2.0:

WHAT IT MEANS FOR RETIREMENT PLANNING

A bill that comprehensively reshapes the realm of employer-sponsored retirement plans for employers and employees alike has been passed into law and additional legislation may be passed soon. The bipartisan Setting Every Community Up for Retirement Enhancement (SECURE) Act—originally introduced in April 2019—was signed into law on December 20, 2019. Shortly after that, COVID-19 became a primary focus for everyone, so the changes brought by the SECURE Act were not covered as extensively as they might have been in different circumstances. Below is a look at what the new proposed legislation (known as the SECURE Act 2.0) may contain along with a summary of the provisions of the SECURE Act.

What is the Intention of the SECURE Act and SECURE Act 2.0?

The purpose of the SECURE Act and SECURE Act 2.0 is the expansion of retirement plan coverage and the lowering of retirement savings hurdles for working Americans. Lawmakers seek to place the onus on employers to incentivize employees to invest in their own financial futures. The act is also intended to help employers overcome some of the challenges involved with offering and administering a workplace retirement plan.

Secure Act 2.0

In October of 2020, Representatives Richard E. Neal (D-MA) and Kevin Brady (R-TX) introduced the Securing a Strong Retirement Act of 2020 (SECURE Act 2.0). Some provisions of this proposed bill are below.

- **Catch-up Contributions:** One popular item included in the bill is increasing catch-up contribution limits to \$10,000 (and \$5,000 for SIMPLE plan participants) for those age 60 or over. Currently, the allowable catchup contribution is \$6,500 (and \$3,000 for SIMPLE plan participants) beginning at age 50.
- **Tax Credits**
 - **Start Up Tax Credit:** The bill creates a new tax credit for businesses with 100 or fewer employees to offset up to \$1,000 of employer contributions for each employee, which gradually phases out over five years.
 - **Military Spouses:** The bill gives small employers a tax credit with respect to their defined contribution plans if they make military spouses eligible to participate within two months of hire, make military spouses eligible for any matching or nonelective contribution upon eligibility, and 100% vest military spouses in all employer contributions.

- **Saver's Tax Credit:** This bill also removes the phase out of the Saver's Tax Credit so all employees under the income cap would get a 50% tax credit, up to a higher \$1,500 per year.
- **Required Minimum Distributions (RMDs)**
 - Because many Americans are working past typical retirement age, the bill raises the RMD age set by the SECURE Act from 72 to 75 for defined contribution (DC) plans and traditional IRAs.
 - In addition, the bill exempts accounts with \$100,000 or less from RMDs and increases the annual limit that can be given to charity to \$130,000.
- **Lifetime Income Option:** The bill would allow life time income annuities to be offered as Qualified Default Investment Alternatives (QDIAs) in retirement plans.
- **Auto-Enrollment & Auto Escalation:** One feature of the bill that has met mixed reviews is its requirement for newly-established defined contribution plans (401k or SIMPLE IRA plans) to enroll participants automatically with at least a 3% contribution rate and increase the rate through auto-escalation by 1% per year until it reaches 10%. In the past, auto-enrollment was permitted but not required. Employees do have the ability to opt out of auto-enrollment, but industry data shows that they typically will stay in the plan rather than opting out. Existing plans would be grandfathered so would not be required to add this feature.
- **Student Loans:** Another feature with mixed reviews is allowing individuals to pay down their student debt instead of contributing to a 401(k) plan and still receive an employer-matching contribution to the employer-sponsored retirement plan.
- **Enrollment Incentives:** One additional feature with mixed reviews is allowing employers to offer small, immediate financial incentives, such as gift cards, to encourage plan participation in the retirement plan; currently, only matching contributions may be used as an incentive to make elective contributions.
- **Plan Administration**
 - **Missing Participants:** The bill would create a federal Office of Retirement Lost and Found to maintain a database of unclaimed benefits.
 - **Self-Correction:** The bill would permit self-correction of inadvertent compliance errors at any time before IRS identified the violations. NOTE: There is a similar program already in existence for certain corrections called the Voluntary Correction Program. It appears the intent is to expand corrections that may be made under the program.
 - **Overpayments:** The bill would establish a system for recouping inadvertent overpayments to plan participants.
- **403(b)s:** 403(b) plans would be allowed to invest in collective investment trusts (CITs), which has been touted as a way to help a plan sponsor to reduce costs.

At this point, SECURE Act 2.0 has been proposed and has bipartisan support but has been passed in neither the House nor the Senate. We will continue to monitor the progress of the bill and release updates.

What Does the SECURE Act Mean for New Retirement Plans?

While SECURE Act 2.0 has not yet been made law, the SECURE Act has passed and affects retirement plans now. Tax credits are a key benefit designed to incentivize creating a workplace retirement plan:

- The SECURE Act increases tax credits for plan startup costs for 3 years (the first year of a plan and the 2 years immediately following) and works as follows: A tax credit of 50% of expenses up to the greater of \$500 or \$250 times the number of non-highly compensated employees (NHCEs), not to exceed \$5,000.
- The SECURE Act also provides tax credits to businesses that offer an automatic enrollment provision to their employees in 401(k) and SIMPLE IRA plans. This change incentivizes business owners and organizations to make saving easier for employees. It is a \$500 tax credit for 3 years for implementation in 2020 or later. Please note, these tax credits will only affect plans that begin offering automatic enrollment in 2020 rather than plans that are already offering this provision.

In addition, starting in the 2020 tax year, plan sponsors have additional time to adopt a retirement plan. They can decide to set up a plan as late as the due date of their tax return, which means that businesses can know their profits before establishing a retirement plan.

What Does the SECURE Act Mean for Retirement Plan Sponsors?

Although the SECURE Act includes 29 provisions in total, below is a breakdown of those that specifically affect retirement plans.

- ❖ **Allow long-term, part-time employees to participate in the retirement plan.** Employers are required to offer eligibility to these employees once they complete either one full year of service (with more than 1,000 hours worked) or three consecutive years of service with at least 500 hours worked per year. While the employer is required to allow these long-term, part-time employees to defer a portion of their pay into the plan, employers are not required to provide an employer contribution to part-time employees even if they do provide a contribution to full-time employees.
- ❖ **Allow pooled employer plans (PEPs).** PEPs permit unrelated small businesses to band together in an open retirement plan arrangement. The idea is that this will enable companies with smaller plans to take advantage of economies of scale and employ features that typically are available only in larger plans. Per the new law, these plans can be effective in January 2021. BFG is working with providers to develop and evaluate a PEP and will be communicating with each client to evaluate whether this option could be beneficial for each plan.
- ❖ **Increase the automatic safe harbor deferral maximum to 15%.** Up from 10%, this increase raises the ceiling for employees to take advantage of automatic in-plan retirement saving.
- ❖ **Simplify 401(k) safe harbor rules by eliminating certain notice requirements.** Included among the eliminated requirements is the nonelective safe harbor 401(k) notice for plans that provide a 3% nonelective safe harbor contribution to employees. Lifting this requirement eases some of the administrative burden that falls on plan sponsors with respect to notice delivery.
- ❖ **Remove the restriction on retirement contributions after account owners reach age 70½.** This change makes it possible for account owners to make contributions to retirement accounts, regardless of their age.
- ❖ **Raise the age for required minimum distributions from 70½ to 72.** As a result, retirement savings can last longer into retirement years as Americans' life expectancies increase.

- ❖ **Require lifetime income projections to appear on plan participant benefit statements.** As a result, retirement savers are provided a clearer picture of their retirement savings progress.

Next Steps

The provisions of the SECURE Act went into effect on January 1, 2020. Given the proximity of the act's passage to its effective date, however, a remedial amendment period clause allows employers to make changes to their plans by the 2022 plan year (or the 2024 plan year for certain governmental plans). This clause will help ease the administrative burden on employers to comply with the new law.

For retirement plan administrators and business owners who either currently offer or are interested in starting to offer a workplace retirement plan to their employees, the signs are clear: lawmakers are focused on improving the American retirement system through increased—and easier—access to retirement savings vehicles, particularly workplace retirement plans.

Our Corporate Retirement team at BFG has been discussing the changes brought by the SECURE Act and recommending changes that may benefit existing retirement plans at our client Review meetings.

Many employers have expressed interest in the pooled employer plan (PEP) concept. We are evaluating the PEP avenue that the SECURE Act provides and how that might benefit both new and existing retirement plans. We have been in conversations with providers that can put together a PEP. The PEP's predecessor, known as a MEP, has been available for some time but is less appealing due to a "bad apple" rule that, without going into detail, created unreasonable liability for employers. The concept of a PEP is great, yet there are still some potential downsides for certain employers. We can help you evaluate whether a PEP is right for your business's retirement plan.

For More Information

For more information or assistance, please contact our Corporate Retirement team at **210-745-6393**, toll-free at **1-888-757-2104**, or **CorporateRetirement@BFGonline.com**.



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