CONGRESS PASSED THE SECURE ACT 2.0:

HERE IS WHAT IT MEANS FOR RETIREMENT PLANNING

On December 29, 2022, President Biden signed into law a series of new laws – known collectively as “Secure Act 2.0” – as a part of a $1.7 trillion spending package. The new legislation includes many changes to retirement savings such as increasing the age of required minimum distributions (RMDs), allowing unused 529 funds to roll over to a retirement account penalty-free, simplifying methods of saving for workers with student loans, and more.

What is the Background & Intention of the SECURE Act 2.0?

In June 2022, the Senate Finance Committee unanimously approved a series of proposals that made full congressional passage of this retirement-improvement package more likely. The bipartisan Setting Every Community Up for Retirement Enhancement (SECURE) Act— a bill that aimed to comprehensively reshape the realm of employer-sponsored retirement plans for employers and employees alike —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. But now, the SECURE Act 2.0 intends to build upon the original SECURE Act, which ushered in changes aimed at increasing retirement security by increasing access to workplace savings plans, among other efforts.

The intent of both 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. In this legislation, 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.

An Overview of the SECURE Act 2.0

Some provisions of the recently passed bill are below:

- **Catch-up Contributions:**
    - One popular item included in the law is increasing catch-up contribution limits to $10,000 for those between age 60 and 63 for 401(k), 403(b),

    - governmental plans, and IRA account holders. This will take effect in 2025. Currently, the allowable catchup contribution is $6,500 beginning at age 50.
    - Less popular is a requirement that starts in 2024: individuals who have incomes over $145,000 will be required to transfer their catch-up contribution to a Roth IRA. This will require them to pay tax on the catch-up contribution, but the future distributions from the Roth account will be tax free.
- 403(b)s:
    - Collective Investment Trusts: There is a provision which allows employers with 403(b) plans, including public schools and tax-exempt organizations, to structure their retirement plans as collective investment trusts. This began in 2022. However, the proposal is applicable to amounts invested after enactment-but practically not (yet) available under legislation to address securities law.
    - Multiple Employer Plans & Pooled Employer Plans: The act will allow 403(b) plans (other than church plans), which are generally sponsored by charities, educational institutions, and non-profits, to participate in multiple employer plans and pooled employer plans. These pooled arrangements may be less costly for employers to maintain.
- Roth Accounts: Designated Roth accounts in employer plans are encouraged under the new law. Plans may allow employees to designate employer contributions as Roth, so the contribution is currently taxable but with tax-deferred growth and tax-free distributions in the future. Even though the employer contribution would be currently taxable to the employee, it is still a tax-deductible expense to the employer.

  Also, Roth accounts within 401(k) plans, 403(b) plans and 457 plans are no longer subject to RMD rules. This provision puts Roth accounts on par with Roth IRAs. Prior to SECURE Act 2.0, employees had to transfer their Roth accounts from the employer plan to a Roth IRA to escape RMDs. Now employees can continue to compound earnings tax free after retirement within their employer's plan.
- Tax Credits
    - Start Up Tax Credit: The law creates a new tax credit for new businesses established after 2023 with 50 or fewer employees to offset up to $1,000 of employer contributions for each employee for employees making less than $100,000 in the prior year.
    - Military Spouses: *Optional* for employers, the bill gives small employers a tax credit of up to $500 ($200 a piece plus up to $300 matching contributions) per military spouse employee 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. The credit applies for up to three years but does not apply to highly compensated employees. This begins in 2023.
    - Saver's Tax Credit: Beginning in 2027, low to middle income employees will be eligible for a federal matching contribution of up to $2,000 per year that must be deposited into their retirement savings account. The match phases out based on income and tax-filing status and replaces the current Saver's Credit.
- Auto-Enrollment & Auto Escalation: One feature of the law that has met mixed reviews is its requirement for newly established defined contribution plans (a retirement plan in which the employer, employee or both make contributions on a regular basis, such as

401k or 403(b) 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 proves 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.

- 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 73 for defined contribution (DC) plans and traditional IRAs beginning in 2023. In 2033, the age will increase to 75.
  - The Roth IRA is currently exempted from distributions even if the owner has reached the normal RMD age. Starting in 2024, Roth 401(k) plans also will be exempted from RMDs. With no required distributions, Roth IRA and 401(k) plans will be permitted to increase in value during the life of the owner.
- **Student Loans Payment Match:** Another feature 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. This also applies to those with 403(b)s, 457(b)s, and SIMPLE IRAs.
- **Enrollment Incentives:** One additional feature with mixed reviews is allowing employers to offer small, immediate financial incentives, such as gift cards with a value up to $25, to encourage plan participation in the retirement plan; previously, only matching contributions may be used as an incentive to make elective contributions. This begins in 2023.
- Plan Administration
  - **Missing Participants:** The law creates a federal Office of Retirement Lost and Found to maintain a database of unclaimed benefits. This begins at the end of 2024.
  - **Self-Correction:** The law 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. For more information on that, please see our article.) It appears the intent is to expand corrections that may be made under the program.
  - **Overpayments:** Plan administrators no longer have to recoup mistaken payments after a three-year period when the individual did not cause the overpayment, and those who received them get additional protections, including protecting rollovers of those overpayments. This began in 2022.
- **Qualified Charitable Distributions Enhanced:** The IRA charitable rollover or qualified charitable distribution (QCD) limit of $100,000 for 2023 will be indexed for inflation starting in 2024. Individuals age 70½ or older are permitted to make distributions from their IRA directly to charity and avoid recognition of income. The act expands the QCD by allowing a one-time transfer of up to $50,000 to a charitable remainder annuity trust, a charitable remainder unitrust or an immediate charitable gift annuity.

What Does the SECURE Act 2.0 Mean for New Retirement Plans?

Tax credits are a key benefit designed to incentivize creating a workplace retirement plan:

- Under current law, employers with fewer than 100 employees that adopt a new retirement plan may qualify for an annual tax credit for up to 3 years equal to the lesser of (1) 50% of the administrative cost of establishing the plan, or (2) $5,000. Effective for 2023, SECURE Act 2.0 increases the percentage from 50% to 100% for employers with

50 or fewer employees and establishes a new tax credit for contributions made by small employers to a newly established retirement plan (other than a defined benefit plan). The new tax credit will be a percentage of the amount contributed by the employer for employees.

What's Not in the Law?

Prior bills presented in Congress sought to limit the ability of taxpayers to engage in Roth conversions and what is known as the Backdoor Roth conversion. SECURE 2.0 did not address these items, and therefore, Roth conversion strategies should remain viable.

Additionally, the law does not address the confusion surrounding inherited retirement accounts and whether RMDs would apply to a beneficiary each year. Such final regulations to the original SECURE Act remain pending.

Next Steps

We will continue to monitor and interpret the new legislation as well as any associated deadlines. 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 remain clear: lawmakers are focused on improving the American retirement system through increased—and easier—access to retirement savings vehicles, particularly workplace retirement plans.

As always, if you have any questions or concerns, please reach out to us.

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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