BANK OF AMERICA

Understanding the SECURE 2.0 Act of 2022

On December 29, 2022, President Biden signed into law the $1.7 trillion Consolidated Appropriation Act, 2023. Included in the more than 4,000 pages of legislation are various spending and appropriations bills, including the long-anticipated retirement saving bill known as ***SECURE 2.0 Act of 2022*** ("the Act" or "SECURE 2.0"). This summary provides an explanation of many of the key changes enacted under SECURE 2.0. In total, the Act includes 92 new or modified retirement provisions. In some respects, this new law is a continuation and amplification of the changes made under the SECURE Act passed in 2019, but also included are many new provisions that attempt to address deficiencies in retirement plan participation and savings among workers.

SECURE 2.0 provisions affecting employer-sponsored plans and IRAs

Increase in age for required minimum distributions

Tax-deferred retirement plans generally require account owners to begin taking distributions — and pay the corresponding deferred income taxes — during their lifetime. These mandatory distributions are referred to as required minimum distributions (RMDs). The deadline for commencing RMDs is known as the required beginning date (RBD). This deadline is intended to limit the amount of time assets can grow on a tax-deferred basis in the retirement account.

However, with many workers choosing to retire later in life, more and more individuals are reaching their RBD while still working. Recognizing that forcing distributions from retirement accounts while many individuals are still working conflicts with the goal of encouraging saving for retirement, the first SECURE Act extended the RBD to April 1 of the year after the account owner turns 72. Previously, the age was 70½.

Under SECURE 2.0, beginning in 2023, that age is increased to 73 (note: those who turned 72 during 2022 are covered by the "old rules" — i.e. since they turned 72 in 2022, their first RMD is due for 2022). SECURE 2.0 also provides that beginning in 2033 the age will ultimately increase to 75. For those born in 1950 or earlier, there is no change. For those born from 1951 to 1959, required minimum distributions commence at age 73; and, for those born 1960 or later, distributions commence at age 75.

Effective date: January 1, 2023. Required.

Reduction of penalties for failure to take distributions

If an individual fails to take their RMD by the annual deadline (April 1 of the year after turning 73 for the first RMD and December 31 for all subsequent RMDs), they are subject to a significant excise tax. Under prior law, this tax was equal to 50% of the amount of the missed RMD.

SECURE 2.0 has reduced that tax to 25%. The new law also provides an opportunity to further reduce the tax to 10%.

This requires that the taxpayer take the RMD and file a return reflecting the excise tax during what is referred to as the "correction window." The correction window begins on the date by which the RMD should have been taken and ends at the earlier of: (1) the date of mailing a notice of deficiency for the excise tax due; (2) the date the imposed excise tax is assessed; or (3) the last day of the second taxable year after the tax was imposed.

Effective date: All taxable years beginning after December 29, 2022. Required.

Repayment of qualified birth or adoption distributions (QBADs)

The 2019 SECURE Act permitted individuals to take distributions from a retirement plan of up to $5,000 for qualified birth and adoption expenses without being assessed a 10% early withdrawal penalty. While such distributions are penalty-free, they are subject to any applicable income taxes. However, if such distributions are repaid to the plan, they would be treated as a tax-free rollover, and any taxes previously paid could be refunded to the taxpayer. While there was no set deadline for repaying these expenses, taxpayers generally have three years from the date of filing to amend a tax return and receive a refund.

SECURE 2.0 limits the repayment period to three years, the maximum number of years that a taxpayer may amend a return and file for a refund of taxes assessed on the QBAD.

Effective date: For any QBAD distributions made after December 29, 2022, and retroactively to prior distributions for a three-year period beginning on the day after the distribution was received. Optional.

Withdrawals for individual cases of domestic abuse

Individuals who are victims of domestic abuse may take distributions from an IRA or employer plan of up to the lesser of $10,000 or 50% of the nonforfeitable benefit in a defined contribution plan. Individuals may repay the distributed amount within three years of the withdrawal. Distributions are subject to tax but are exempt from the 10% early withdrawal penalty.

Effective date: Distributions after December 31, 2023. Optional.

Withdrawals for emergency expenses

The Act creates a new withdrawal option from defined contribution plans and IRAs for emergency purposes of up to the lesser of $1,000 or the excess of the individual's vested benefit over $1,000, per year. Individuals and plan participants self-certify that they are eligible to take the withdrawal.

These distributions are similar to QBADs that were created under the first SECURE Act of 2019. Eligible distributions are exempt from the 10% early withdrawal penalty, and the taxpayer has the option to repay the distribution within three years. Individuals may only take one Emergency Distribution per calendar year and cannot take an additional emergency withdrawal from the same plan/IRA for three calendar years unless they have (1) rolled the distribution back to the same plan/IRA or (2) they have made sufficient contributions to the same plan/IRA in an amount at least equal to the prior emergency distribution.

Effective date: Distributions made after December 31, 2023. Optional.

Self-correction of inadvertent plan and IRA violations

The Act permits that except as otherwise provided in guidance, generally all inadvertent plan violations may be self-corrected under the IRS's Employee Plans Compliance Resolution System (EPCRS) without a submission to the IRS.

The rule does not apply if (1) the IRS discovers the violation on audit and the employer has not at that point taken actions that demonstrate a commitment to correct the violation, or (2) the self-correction is not completed within a reasonable period after such failure is identified. Additionally, the Act would apply EPCRS to inadvertent IRA errors.

Effective date: December 29, 2022. Optional.

Qualified longevity annuity contracts (QLAC) in IRAs and plans

QLACs are deferred annuities that begin payment later in an individual's life expectancy. Individuals who choose to purchase a QLAC in an IRA or in a defined contribution plan are subject to certain limitations under existing regulations that limit the premiums paid for a QLAC to the lesser of $145,000 and 25% of the individual's account balance in a plan or IRA. The Act repeals the 25% limitation and raises the $145,000 limit to $200,000.

Effective date: Contracts purchased after December 29, 2022. Required.

Required RMD barriers removed for life annuities

Under current law, while life annuities are permitted investments in IRAs and plans, they often bump up against RMD regulations. This results in many of the life annuity products being incompatible with IRAs and defined contribution plans. The change under SECURE 2.0 updates the actuarial tables used under the RMD regulations. Ultimately, this makes lifetime income annuity decisions inside defined contribution plans and IRAs potentially more appealing because a broader range of products will now meet the RMD rules.

Effective date: Calendar years after December 29, 2022. Required for IRAs and plans that hold life annuities.

Clarification on penalty tax exemption for the substantially equal periodic payment rules

One of the exceptions to the 10% early withdrawal tax on distributions provides for an individual to take penalty-free distributions from a tax-preferred retirement vehicle in the form of substantially equal periodic payments over the recipient's life expectancy. If there is any change to the payout scheduled, the penalty applies retroactively. The SECURE 2.0 provision provides that the exception continues to apply in the case of a rollover, exchange of annuities or RMD.

Effective date: For transfers, rollovers and exchanges after December 31, 2023, and effective for annuity distributions on or after December 29, 2022. Required.

Clarification of penalty tax exemption for terminally ill individuals

Under the bill, an exception to the 10% early withdrawal tax applies in the case of a distribution made to an employee who is terminally ill on or after the date on which such employee has been certified by a physician as having a terminal illness. For purposes of this provision, "terminally ill individual" means an individual who has been certified by a physician as having an illness or physical condition that can reasonably be expected to result in death in 84 months or fewer after the date of the certification.

Effective date: For distributions after December 29, 2022. Required.

Payout period to special needs trust RMDs

The original SECURE Act truncated the payout term for certain beneficiaries. Special rules apply in the case of beneficiaries with a disability so payouts can last for a longer period, even if the disabled individual is the beneficiary of a trust. SECURE 2.0 resolves an issue with the original SECURE Act and clarifies that, in the case of a special needs trust established for a beneficiary with a disability, the trust may provide for a charitable organization as the remaining beneficiary without causing a truncated payout period. However, private foundations, donor advised funds, supporting organizations and split-interest trusts will not qualify for the favorable treatment provided under this provision.

Effective date: Effective for calendar years beginning after December 29, 2022. Required.

Saver's credit now saver's match

Before SECURE 2.0, certain taxpayers who contributed to an IRA, employer plan or ABLE (Achieving a Better Life Experience) account were eligible for a tax credit—known as a saver's credit. The tax credit was non-refundable, so many taxpayers who did not have a sufficient tax liability never benefited from the credit. SECURE 2.0 significantly revamps the credit and turns it into a matching contribution—saver's match—from the federal government, which must go into either the taxpayer's IRA or retirement plan. The new match is one of the centerpieces and most costly provisions of SECURE 2.0 ($9 billion).

The federal match is 50% of the IRA or retirement plan contribution and is capped at $2,000. Only lower income taxpayers are eligible for the government match. For joint filers, a full match is given to those earning up to $41,000 (the match phases out at $71,000). For single filers, a full match is given to those earning up to $20,500 (the match phases out at $35,500). The match cannot be withdrawn by the taxpayer before retirement without incurring penalties, including repayment to the federal government.

It is important to note that IRA providers and defined contribution plan employers are not required to accept these government matching contributions. If a taxpayer does not designate an IRA or plan for their saver's match, or the IRA or plan will not accept the match, the amount will be held by the IRS and treated as an overpayment of tax.

Designating an IRA for receipt of a saver's match would be similar to designating a bank account to receive a tax refund, which is done routinely today. However, with employer plans it may be a bit different as there generally are not specific account and bank routing numbers for individual participant accounts. There is time for record keepers to sort out how best to manage receipt of saver's match payments to participant accounts for employer plans that choose to accept them.

Effective date: All tax years after December 31, 2026. Optional.

SECURE 2.0 provisions affecting employer-sponsored retirement plans

Paper benefit statement requirement

Existing Department of Labor (DOL) regulations carve out several exceptions allowing benefit statements to be delivered electronically. SECURE 2.0 narrows these exceptions by requiring at least one paper notice be provided before electronic notices can be provided, unless certain conditions are met.

For defined contribution (DC) plans, unless the participant elects otherwise, at least one of the benefit statements each year must be on paper. In the case of a participant-directed DC plan, the other three can be electronic. For defined benefit plans, a paper statement must be provided at least once every three years unless the participant elects otherwise. The DOL must update regulations and guidance by December 31, 2024.

Effective date: Plan years beginning after December 31, 2025. Required.

Expanding automatic enrollment in newly established retirement plans

One of the key objectives of SECURE 2.0 is to increase worker participation and overall savings in retirement plans. Under the new law, companies with newly established 401(k) and

403(b) plans after the enactment of SECURE 2.0 will now be required to automatically enroll their employees into the plans and periodically increase their employees' plan contributions. Workers will continue to have the choice of opting out of contributions or defining their own contribution percentages.

For the first year of eligibility, the percentage of compensation contributed by the employee must be between 3% and 10% upon being automatically enrolled in the plan. In each subsequent year, the contribution percentage must increase by 1%. These increases must continue until a worker is contributing a minimum of 10% of their eligible compensation and a maximum of 15%.

The new law does provide exceptions to automatic enrollment for small companies (those with 10 or fewer employees) and companies that have been in business for fewer than three years. It is important to note that plans in existence prior to the enactment of SECURE 2.0 are grandfathered and not affected by these new plan defaults.

Effective date: Required for newly established plans with plan years beginning after December 31, 2024.

Increase in cash out limit for mandatory distributions

When an individual leaves employment, if their defined contribution plan balance is under a certain limit, the plan sponsor can force that distribution out of the plan. Individuals are given the option to receive that force-out amount or direct it to be rolled to an IRA or another employer plan. If no action is taken, the plan sponsor will send it to an IRA established on behalf of the former employee. The legislation increases the current cash out limit from $5,000 to $7,000.

Effective date: For distributions made after December 31, 2023. Optional.

Spousal beneficiaries may treat inherited accounts as their own

Currently, a deceased IRA owner's spouse may elect to treat the inherited account as their own for purposes of the RMD rules. Depending on the age of the surviving spouse and deceased participant, this may result in a longer RMD payout period for the surviving spouse. SECURE 2.0 extends this to spousal beneficiaries in defined contribution plans as well.

Effective date: Distributions made after December 29, 2022. Required.

Automatic relief for federally declared disasters

In the past, Congress has often provided relief following significant federally declared disasters for individuals to access funds in their retirement plans. This disaster relief has been ad hoc each time. It often permitted distributions that could be paid back and provided some relief for loan repayments. Rather than providing special rules on a disaster-by-disaster basis, SECURE 2.0 provides permanent rules for the use of retirement funds in the case of any federally declared disaster.

Plans can permit participants to take distributions of up to $22,000 without the 10% premature distribution penalty. Individuals can then decide if they want to bring the distributions into their gross income for federal income tax purposes over three years, or they can choose to repay the distributions to an eligible retirement account within three years.

The limit on disaster-related loans is increased to the lesser of 100% of the present value of the vested account or $100,000. Additionally, amounts distributed prior to the disaster to purchase a home can be recontributed.

Effective date: For disasters occurring on or after January 26, 2021. Optional.

Long-term, part-time employee elective deferrals after two consecutive years

Under the first SECURE Act in 2019, plans were required to allow long-term, part-time employees to make elective deferrals into the plan after three consecutive years of service, as defined by the legislation and subsequent regulatory guidance. This eligibility only applies to elective deferrals; all other matching and non-elective employer contributions remain subject to regular plan eligibility guidelines. SECURE 2.0 accelerates access to elective deferrals for long-term, part-time employees from three consecutive years of service to two consecutive years of service.

Effective date: For plan years after December 31, 2024. Required.

Disregarding excludable employees for certain top-heavy purposes

Discrimination tests applicable to 401(k) plans permit separate testing of non-excludable and excludable employees (employees under age 21 or who have not completed a year of service). However, this type of testing has not been applicable to a plan's top-heavy testing. As a result, small business employers may not cover otherwise excludable employees, because they are concerned their top-heavy testing may result in a required 3% nonelective contribution if the plan is found to be top-heavy.

Under the Act, if employees who are otherwise excludable from a defined contribution plan under the general age and service rules are covered by the plan, such employees may be excluded from consideration in determining if the plan or any other employer plan satisfies the top-heavy minimum contribution rules.

Effective date: Plan years beginning after December 31, 2022. Optional.

Reduced notice requirements for unenrolled participants

Under current law, employees eligible to participate in a retirement plan are required to receive a broad array of notices of their various rights under the plan. In the case of eligible employees who have not elected to participate in the plan ("unenrolled participants"), these notices are generally unnecessary and add administrative cost.

Under the bill, defined contribution plans would cease to be required to provide notices to unenrolled participants, other than an annual reminder notice of the participant's eligibility to participate in the plan.

Effective date: Plan years beginning after 2022. Optional.

Cash balance plan projections

For cash balance plans that credit a variable rate of interest, SECURE 2.0 provides that the interest crediting rate is treated as in-effect, and the projected interest crediting rate is a reasonable projection of such variable interest rate, subject to a maximum of 6%.

Effective date: Plan years beginning after December 29, 2022. Required.

Family attribution rules revised

For purposes of determining whether two or more companies must be treated as one company under current law, certain ownership by family members is attributed to other family members. SECURE 2.0 revises these rules and states that the spousal attribution rules will not apply to spouses with separate businesses in community property states. This change will affect controlled group rules, which can be a complex analysis for individuals who own multiple trades or businesses.

Effective: For plan years beginning after 2023. Required.

Amendments to increase benefit accruals under plan for previous year permitted until employer tax filing deadline

Under current regulation, if a plan sponsor wants to make a discretionary amendment to the plan, it must be adopted by the end of the plan year in which the plan amendment is operationally put in place. The changes under SECURE 2.0 will permit retroactive discretionary amendments that increase benefits accrued under the plan, effective for the preceding plan year (not for matching contribution amounts) up to the employer's tax filing deadline (including extensions). This is applicable to pension, profit-sharing, stock bonus and annuity plans.

Effective date: Plan years beginning after December 31, 2023. Optional.

Employer may rely on employee self-certification for hardship withdrawals

Under current regulation, plan sponsors are required to substantiate hardship by collecting source documents or a summary of information contained in the source documents. The Act will permit employers to rely on employee self-certification that they have had an event that constitutes a deemed hardship for purposes of taking a hardship withdrawal from a 401(k) plan or a 403(b) plan.

The bill also codifies the current law permitting self-certification, that the amount of the distribution is not in excess of the need. Treasury is authorized to issue regulations overriding this rule where the plan administrator has actual knowledge to the contrary.

Effective date: For plan years beginning after December 29, 2022. Optional.

Higher catch-up contribution limit for certain workers

Many employer-sponsored retirement plans permit what are known as "catch-up" contributions for individuals aged 50 and older. Catch-up contributions simply increase the amount that an individual may add to their retirement plan in a particular year. For 2023, 401(k) and 403(b) plans permit a catch-up contribution of $7,500 in addition to the standard employee contribution limit of $22,500. SIMPLE plans allow for a $3,500 catch-up contribution on top of the $15,500 standard employee contribution limit.

SECURE 2.0 allows for an expanded catch-up contribution for plan participants who are ages 60–63. For these workers, the catch-up increases to $10,000 for 401(k) and 403(b) plans, and $5,000 for SIMPLE IRAs and SIMPLE 401(k) plans, or 150% of the age 50 catch-up amount, whichever is greater. The $10,000 and $5,000 are subject to an annual cost of living adjustment after 2025. Those over the age of 64 will not be eligible to take the enhanced catch-up contribution; they are limited to the regular catch-up contribution.

Catch-up contribution limits

	2022	2023	2024	2025
401(k) Regular Contribution Limit	$20,500	$22,500	$22,500[1]	$22,500[1]
401(k) Catch-Up Limit	$6,500	$7,500[1]	$7,500[1,2]	$7,500[1,2]
401(k) Expanded Catch-Up Limit for Ages 60–63	n/a	n/a	n/a	$10,000[2,3]

1 Amounts annually adjusted for inflation.

2 For taxpayers earning $145,000 or less, the catch-up and expanded catch-up contributions can be contributed to a Roth or regular deferred account. For those earning more, such contributions must be made on an after-tax basis to a Roth account.

3 Amounts annually adjusted for inflation and will be greater of $10,000 or 150% of normal (inflation-adjusted) catch-up contribution.

Effective date: Contributions will be permitted for tax years beginning after December 31, 2024. Optional.

Catch-up contributions after age 50 must be after-tax Roth contributions

Prior to SECURE 2.0, employees aged 50 and older who made catch-up contributions were permitted to designate that this additional contribution be made either on a tax deferred basis or to a Roth account on a post-tax basis. SECURE 2.0 now requires that all catch-up contributions be made on an after-tax basis to a Roth retirement account. As a result, the catch-up contribution will not be excluded from the employee's income but will grow tax-free and can be withdrawn tax-free in the future, subject to Roth distribution rules.

There is an exception for employees with compensation of $145,000 or less, adjusted annually for inflation. The $145,000 limit is based on the prior year's wages paid by the employer sponsoring the plan. Plans that do not currently permit Roth contributions will need to consider adding a Roth contribution option if they are to continue to permit catch-up contributions.

Effective date: Tax years beginning after December 31, 2023. Required for plans that permit catch-up contributions.

Employer matching contributions made as Roth contributions

Before the enactment of SECURE 2.0, all employer contributions were made on a pre-tax basis to employee accounts. This was the case even for matching contributions for employees contributing to a Roth account — the employee's contributions would go to the Roth account and the match would be made in a pre-tax account. Under the new law, plans may now give employees the option of designating that the matching contribution be made as a Roth contribution. Matching contributions made to a Roth by the employer would be considered taxable income to the employee.

Effective date: December 29, 2022. Optional.

Roth plan RMD rules

SECURE 2.0 has eliminated RMDs for Roth employer accounts during the lifetime of the owner. Unlike traditional IRAs and most other retirement plans, Roth IRAs do not require owners to take RMDs during their lifetime. This extends the amount of time that assets may remain in the Roth IRA and grow tax-free.

However, previously for employer Roth accounts within 401(k) and 403(b) plans, there was not a similar exception to the RMD rules. For employer plan participants with Roth accounts, assets would have to be rolled out of the plan and into a Roth IRA to avoid being subject to RMDs.

Effective date: Taxable years beginning after December 31, 2023. NOTE: The change in rule does not apply to distributions required for years prior to 2024 that are permitted to be taken after January 1, 2024. Required.

Matching contributions for student loan payments

Recent graduates often join the workforce with significant student loan obligations. In many instances, these individuals will have to prioritize making student loan payments over contributing to their workplace retirement plans. This means they're missing out on any matching retirement plan contributions that an employer would otherwise make on their behalf.

Under SECURE 2.0, employers are permitted to make matching contributions to 401(k), 403(b), 457(b) and SIMPLE IRA plans for any qualified student loan payments made by an employee. Due to changes under the Act, going forward, plan sponsors may calculate matching contributions by considering all student loan payments, up to the amount of the employee's maximum allowable contributions to the retirement plan for the year. An employer may rely on an employee's certification that a qualifying student loan payment was made.

Effective: Years beginning after December 31, 2023. Optional.

Emergency savings accounts linked to plans

The Act creates a new plan design option referred to as "pension linked emergency savings accounts." Plan sponsors who choose to adopt this provision can include a designated account in their plan that would accept deferrals on a Roth basis, up to $2,500 for emergency savings purposes. All eligible distributions would be deemed to be qualified Roth distributions and as such, non-taxable. Contributions must be invested in a principal preservation investment and amounts may be withdrawn at any time without penalty.

Auto enrollment is permitted up to 3% of compensation, and highly compensated employees are not eligible to contribute to the accounts. There are no employer contributions permitted to the emergency savings account. If the plan offers matching contributions, the amount of the employee deferral into the emergency savings account will be considered for the match, but the matching contribution is made to the participant's account under the employer plan, like any other matching contribution, not into the designated emergency savings account.

This new feature is complicated and will require some additional regulatory guidance to fully understand the implications for plans that are interested in considering this option. The legislation gives the DOL and Treasury authority to issue regulations or guidance on the new accounts related to model language and notices, corrective measures and possible limitation adjustments.

Effective date: Plan years beginning after December 31, 2023. Optional.

Deferral of tax for sales of S-corp stock to ESOP

Section 1042 of the Internal Revenue Code provides that if several requirements are met, an owner of stock in a privately held C corporation may sell their stock to an employee stock ownership plan (ESOP) without recognizing a capital gain on the sale. This gain deferral will continue as long as certain rules are followed for the reinvestment of the proceeds.

SECURE 2.0 extends Section 1042 deferral treatment to sales of S corporation stock, but with a significant limitation. Deferral of gain for S corporation stock sales is limited to 10% of the gross proceeds realized from the sale to the ESOP. This has the effect of dropping the top federal capital gains rate from 20% to 18%.

Effective: For sales occurring after December 31, 2027. Required.

Eliminated penalty on partial annuitization

Under current regulations, if you have an annuity inside of a retirement account plan and the annuity is in payout status, you must treat that annuity as its own RMD account and then also take an RMD from your remaining plan account balance, effectively requiring an individual to meet two separate RMD requirements. This can result in taking more than the calculated RMD for the individual if the annuity payout coupled with the separately calculated RMD amount exceed the individual's required distribution amount for that year.

The new rules would allow individuals to count the annuity payout towards the RMD amount for the year and then only require any outstanding RMD amount to be distributed from the plan account.

Effective date: December 29, 2022. Required.

Long-term care contracts and retirement plan distributions

SECURE 2.0 loosens the distribution rules and permits retirement plans to distribute up to $2,500 per year (adjusted for inflation beginning in 2025) for the payment of premiums for certain specified (high-quality coverage) long-term care insurance contracts for the participant (or their spouse or certain other family members). Distributions to pay such premiums would be exempt from the 10% tax on early distributions, but generally would still be taxable income.

Effective date: December 29, 2025. Optional.

Recovery of retirement plan overpayment

Sometimes, retirees mistakenly receive more money than they are owed under their retirement plans. The legislation would permit plan fiduciaries to decide whether or not to recoup overpayments that were mistakenly made to retirees. If plan fiduciaries do choose to recover overpayments, the Act places limitations and protections on the amount they can recover to protect retirees. In addition, rollovers of the overpayments would remain valid, which is further protection for participants.

Effective date: December 29, 2022. Optional.

Small immediate financial incentives for contributions

Employers generally may not provide benefits conditioned on an employee contributing to a 401(k) or 403(b) plan, except for matching contributions. Prior to SECURE 2.0, this would prohibit employers from providing small gifts (e.g. gift cards) as a financial incentive for their employees to contribute to a retirement plan. SECURE 2.0 provides an exemption for a "de minimis financial incentive" from the contingent benefit and prohibited transaction rules that otherwise would prohibit such gifts.

Effective date: Years beginning after December 29, 2022. Optional.

Creation of retirement savings lost and found database

There are times when individuals are unable to find and receive the benefits that they have earned. This may be because the company they worked for moved, changed its name, or merged with a different company. The Act establishes a Retirement Savings Lost and Found Registry to help participants find their benefits.

The registry is to be housed with the DOL and they have two years from the date of enactment to establish the registry. Plans will be required to report certain information (not already required to be reported) to the DOL about former employees whose benefits have not been paid out. The DOL is not permitted to use the information acquired for the registry for audit purposes. We will have to watch for regulatory guidance to see how and when this additional information will be required to be reported to the DOL.

Effective date: Within two years of the enactment date of December 29, 2022. Required.

SECURE 2.0 provisions affecting small business employer-sponsored retirement plans

Enhancement of the start-up credit for small business employer plan start-up costs

Current law offers a tax credit to a small business (up to 100 employees) that adopts a new qualified plan, which can apply for up to three years, equal to the lesser of (1) 50% of the employer's start-up costs, or (2) as much as $5,000.

SECURE 2.0 increases this credit to cover 100% (up from 50%) of administrative costs, up to $5,000 for the first three years of plans established by *employers with up to 50 employees*. It also clarifies that small businesses joining a multiple employer plan (MEP) are eligible for the credit.

Effective date: Taxable years after December 31, 2022. Optional.

Small business plan credit for military spouse immediate participation

Eligible small business employers may take a new nonrefundable income tax credit if they incorporate certain eligibility requirements specific to military spouses eligible to join their plan. With frequent reassignments in the military, working spouses often do not stay in one job long enough to meet eligibility requirements.

To be eligible for the credit, employers must establish an eligible defined contribution plan where military spouses are eligible to participate within two months of beginning employment, and in which military spouses who are eligible to participate (1) are immediately eligible to receive employer contributions in amounts not less than that received by similarly situated nonmilitary spouses with two years of service, and (2) have an immediate, nonforfeitable right to the accrued benefits derived from employer contributions under the plan.

The credit is the sum of $200 for each such employee plus the amount of the contributions made to all eligible defined contribution plans by the employer with respect to the employee, up to a maximum of $300 for the taxable year for each such employee.

The credit applies for up to three consecutive years, beginning with the first taxable year in which the individual begins participating in the plan.

Effective date: Taxable years after December 29, 2022. Optional.

Starter 401(k)

Employers without a current 401(k) plan could offer a "starter 401(k) plan" with lower contribution caps and simplified rules. Starter 401(k)s are available to employers who do not have an existing plan and must have the following features:

- Exempt from nondiscrimination and top-heavy testing
- Contribution limit of $6,000
- Auto enrollment set anywhere between 3% and 15%
- Does not permit employer contributions
- Adopted by an employer that does not have any other plan (other than for union employees)
- Limits catch-up contributions to the IRA catch-up limit ($1,000, as indexed)

Effective date: Plan years beginning after December 31, 2023. Optional.

Retroactive first year elective deferrals for sole proprietors

The original SECURE Act included a change allowing an employer to establish a new retirement plan after year-end but before the due date of employer's tax return, and to treat the plan as if it were created on the last day of the prior year. This change allows employers to make prior year contributions to the new plan, even though the plan was established after the new year, if the contributions are made before the employer's tax-filing deadline. Prior to the SECURE Act, this would not have been permitted. NOTE: This did not change the requirement that employee elective contributions to 401(k) plans must be made before year-end to qualify as a contribution for that year.

SECURE 2.0 now allows an individual who owns an entire interest in an unincorporated business, and is its only employee, to make employee elective contributions to a new solo 401(k) up to the individual's tax filing deadline (without extensions) and treat the contributions as prior year contributions. This extension of time to make an elective contribution is only available for the first year of the plan.

Effective date: Plan years beginning after December 29, 2022. Optional.

SIMPLE and SEP funded with Roth

Since 2006, employers who provide 401(k), 403(b) and 457(b) plans have had the option to offer their employees both traditional accounts funded with pre-tax dollars and Roth accounts funded with after-tax dollars. For smaller employers who opt to establish SIMPLE or SEP IRAs for their employees, there has not been a Roth option.

SECURE 2.0 now allows for contributions to be made to a SIMPLE Roth IRA account on an after-tax basis. Additionally, for SEP IRAs, which are funded only with employer contributions, employers may allow employees to treat SEP contributions as Roth IRA contributions.

Effective date: Taxable years beginning after December 31, 2022. Optional.

SIMPLE plans may terminate mid-year

Currently, SIMPLE IRA plans may not be terminated mid-year. Under the bill, a SIMPLE IRA would be permitted to be terminated mid-year if a safe harbor 401(k) plan is adopted in its place. Transitions from SIMPLE IRAs to 401(k) plans or 403(b) plans would also be facilitated by allowing rollovers under certain conditions.

Effective date: Plan years beginning after December 31, 2023. Optional.

Additional non-elective contributions permitted in SIMPLE plans

Employers are not permitted to contribute to SIMPLE plans beyond the safe harbor 2% non-elective or 3% matching contribution. SECURE 2.0 allows employers to make additional nonelective contributions under a SIMPLE plan, beyond the standard 2% of compensation or 3% of employee deferrals, up to the lesser of 10% of compensation or $5,000 (as indexed).

Effective date: Plan years after December 31, 2023. Optional.

SEP contributions for domestic employees

Employers of domestic employees, such as nannies or housekeepers, can create a SEP retirement plan for such employees under SECURE 2.0 even though the employer is not operating a business.

Effective date: Taxable years beginning after December 29, 2022. Optional.

SECURE 2.0 provisions affecting IRAs

Inflation indexing IRA catch-up limit

Like employer-sponsored plans, IRAs also permit an additional “catch-up” contribution for those aged 50 and older. For IRAs, the catch-up contribution limit was set at a static $1,000. SECURE 2.0 provides that the catch-up contribution will now be indexed for inflation in increments of $100 beginning in 2024. If the annually indexed amount is not divisible by $100, the catch-up contribution for the year is rounded down to the nearest $100.

Effective date: Years beginning after December 31, 2023. Required.

Excess accumulations in 529 college savings plans: Rollover to Roth IRA

Despite the rising costs of higher education, there are occasions when there are excess funds in a 529 college savings plan. This could be due to excess contributions, robust investment performance, grants or scholarships or a variety of other reasons. It has always been the case that excess funds could be transferred into another family member’s college savings account or distributed to the plan beneficiary (a distribution to a beneficiary — a so-called non-qualified withdrawal — would trigger income on any earnings within the plan and would also trigger a 10% penalty).

A new and favorable penalty-free option is now available to remove excess funds and use them to fund retirement savings. 529 funds can now be rolled directly into a Roth IRA (via a trustee-to-trustee transfer) if certain conditions are met. No more than $35,000 can be rolled over from a 529 plan to a Roth IRA over the lifetime of the 529 beneficiary and no more than $6,500 in any one year (this annual amount is capped at the Roth IRA annual contribution limit, less the amount contributed to an IRA or Roth IRA). To avoid back-end stuffing of a 529 Plan, no rollover is allowed unless the 529 has been open for more than 15 years and no rollover can consist of any funds contributed within five years prior to the rollover.

Effective date: After December 31, 2023. Optional.

Inflation adjustment for qualified charitable distribution (QCD) limitation

Individuals over the age of 70½ are permitted to direct that up to $100,000 per year be distributed to charity from their IRA. This is known as a qualified charitable distribution (QCD). The $100,000 limit has been in place since this provision was first enacted in 2006. SECURE 2.0 provides that the $100,000 annual QCD limit will be indexed for inflation annually, rounded to the nearest multiple of $1,000.

Effective date: For taxable years beginning after December 29, 2022. The first inflation adjustment calculation will be calculated for 2024. Required.

QCD interest entity

SECURE 2.0 has also expanded upon the existing QCDs rules to allow for charitable distributions from IRAs to various types of charitable split-interest trusts, including charitable remainder trusts (CRUTs and CRATs) and charitable gift annuities. However, the impact of this change appears to be extremely limited since a taxpayer may only elect to do this once, and the maximum dollar amount of a split-interest QCD is $50,000. For any of these split-interest entities, the income interest may be held by the IRA owner and/or the owner’s spouse, and all income paid to the lifetime beneficiary will be taxable as ordinary income.

Effective date: For taxable years beginning after December 29, 2022. Optional.

IRAs and prohibited transactions

Taxpayers cannot invest their IRAs in certain investments or simply in any manner they determine. Certain investments or activities can result in a so-called prohibited transaction. If that is the case, the IRA is considered “disqualified” and treated as fully distributed to the individual, irrespective of the size of the prohibited transaction. SECURE 2.0 modifies this severe consequence. If an individual has multiple IRAs, only the IRA with respect to which the prohibited transaction occurred will be disqualified.

Effective date: Taxable years beginning after December 29, 2022. Required.

Other provisions

ABLE account age requirement

Currently, 43 states and the District of Columbia maintain ABLE programs. The law allows a person who has been determined to have a disability (before the age of 26) to save money above the asset limit for Supplemental Security Income (SSI) and Medicaid and not jeopardize those benefits. SECURE 2.0 makes a change and increases the determination age restriction from age 26 to age 46.

Effective date: Taxable years beginning after December 31, 2025. Required.

Conclusion

SECURE 2.0 modernizes and encourages employers to establish retirement plans and nudges — even incentivizing — employees to participate in retirement plans. Many of its provisions do not immediately take effect, and some changes do not take effect for several years. However, the change in the mandatory distribution age to 73 will generally take effect in 2023, so plan sponsors and recordkeepers should review accordingly.

Additionally, while the requirement that most catch-up contributions be designated as Roth contributions is not effective until 2024, plan sponsors who do not currently have a Roth feature in their plan and who want to continue to permit catch-up contributions may want to review and amend their plan in 2023.

Higher income taxpayers aged 50 and older will feel the tax cost of SECURE 2.0 beginning in 2024, when their catch-up contributions can no longer be excluded from their annual income. In the long run, those taxpayers will be able to accumulate those funds on a tax-free basis and will not be required to withdraw them even after retirement.