BANK OF AMERICA

WORKPLACE BENEFITS

SECURE 2.0 Act of 2022

Frequently asked questions

The SECURE 2.0 Act (the “Act”) was signed into law on December 29, 2022, as part of the larger Consolidated Appropriations Act of 2023. The Act includes 92 new or modified retirement provisions some of which are required, others that are optional and have various effective dates. Following are answers to frequently asked questions to help you understand the provisions of the law. The information below is subject to change as we receive further regulatory guidance.

Contents

1. Defined Contribution Plans General Information

Will SECURE 2.0 Act require a company that does not have automatic enrollment for their plans to adopt the automatic enrollment provision? Does a change in 401(k) service providers count as a "new plan"?

A company that adopted a cash or deferred arrangement (CODA) as of the date of enactment (12/29/22) is exempt from the requirement to add an automatic enrollment provision. A change in service providers does not count as a "new plan." Notice 2024-2 clarifies that a plan (or deferral feature within a plan) is established on the date it is adopted, even if it becomes effective as of a later date. The notice also provides guidance regarding how plan mergers and spin-offs impact the grandfathered status with respect to the automatic enrollment requirement.

Will plans be able to maintain their vesting schedule and still allow employer contributions to be designated as Roth?

Yes. However, pursuant to IRS Notice 2024-02, only an employee who is fully vested in the employer contribution account at the time the contribution is allocated may designate such contribution as Roth.

What are the tax implications of the participant electing to receive employer contributions as Roth?

The participant must pay income tax on any employer contributions designated as Roth in the year the contribution is allocated to the individual's account.

Are gift cards permissible under the small immediate financial incentives provision, and what amount is considered to be *de minimis*?

Notice 2024-02 stipulates a financial incentive is *de minimis* only if it does not exceed $250 in value. A gift card or any other gift with value resulting in taxable income does not preclude its use as a financial incentive for purposes of encouraging plan participation.

What are the changes to the Expansion of Employee Plans Compliance Resolution System (EPCRS) that came out of SECURE 2.0 Act?

SECURE 2.0 introduces several updates to EPCRS, including:

- Additional options pertaining to the recovery of plan overpayments
- The expansion of self-correction options for eligible inadvertent failures
- Self-correction options for certain loan and IRA failures
- Permanent use of "safe harbor" correction of certain deferral failures under an automatic contribution arrangement

After SECURE 2.0, the IRS issued Notice 2023-43, which provides for the immediate use of the expanded self-correction options under EPCRS for employer-sponsored plans. IRA custodians, however, must wait until the updated Revenue Procedure is issued to utilize the new correction options under Section 305.

Our administrative processes already provide for participant self-certification for hardship withdrawals. What changed?

Plan sponsors were able to offer a summary substantiation method and participant self-certification process under IRS and Treasury department guidance. SECURE 2.0 codifies the ability for plan sponsors to rely on the participant's self-certification that:

- They have experienced an IRS safe harbor hardship event
- The amount of the distribution does not exceed the amount needed
- They do not have other available financial resources

Further regulatory guidance would be helpful to extend relief to plan fiduciaries who operate in accordance with prescribed rules.

Is there a limit on the amount a terminally ill individual can take from an IRA or participant account?

A There is no limit set in the SECURE 2.0 Act on distributions to terminally ill individuals.

Is the automatic disaster relief provision optional for plans?

A Yes.

2. Defined Contribution Plans Required Mandatory Distributions (RMD)

From a plan sponsor perspective, what changes to RMD impact 401(k) plans?

A Important changes include:

- Effective January 1, 2023, the required beginning date (RBD) for plan distributions is April 1 of the calendar year after a participant attains age 73.
- Effective beginning with the 2024 distribution calendar year, Roth amounts are exempt from RMD rules.
- Effective for taxable year beginning after the date of enactment, the penalty tax for missed RMDs is reduced from 50% to 25%, and further reduced to 10% if the missed payments are taken during the two-year correction window. Other SECURE 2.0 provisions pertain to plans that hold annuity contracts.
- Effective January 1, 2033, the RBD for plan distributions is April 1 of the calendar year after a participant attains age 75.

If a participant's first RMD is due for 2023, but it is not taken until 2024, can Roth amounts be excluded?

A No. Pre-SECURE 2.0 rules require that Roth amounts are subject to RMD rules.

3. Defined Contribution Plans Roth Catch-Up

How does the new Roth basis contribution catch-up requirement for some participants impact plans that do not offer a Roth deferral option?

A While neither provision is required beginning in 2026, a plan must include a Roth deferral feature to allow age-based catch-up contributions for participants whose wages in the prior year exceed $145,000 (indexed).

Does the Roth requirement apply to amounts contributed under the higher catch-up limit from ages 60–63?

A Yes. Beginning in 2026 or if you decide to implement Section 603 in your plan before the end of the transition period, all age-based catch-up contributions must be designated as Roth for participants who earn greater than $145,000 (indexed) in the prior year. The higher catch-up limit is effective for taxable years beginning after 12/31/2024.

How are wages defined when determining who must make Roth catch-up contributions? Is income from other employers and/or household income included?

A For this purpose, wages are defined as wages subject to FICA for the preceding calendar year. Only wages from the sponsoring employer are considered. Household wages or income from an unrelated employer are not counted. Each year will require a look back to determine whether the participant's prior-year wages exceeded the annual threshold.

Does the higher catch-up limit end for participants over the age of 63?

A Yes, the higher catch-up limit ends in the calendar year a participant attains age 63.

How does the required Roth catch-up provision impact our ability to recharacterize excess contributions from a failed Actual Deferral Percentage Test (ADP Test)?

A Pending regulatory guidance, the expectation is that excess amounts due to a failed ADP test will have to be recharacterized as Roth catch-up contributions for those who have earned greater than $145,000 (indexed) in the prior year.

4. Defined Contribution Plans Roth Rollover — 529 Plans

Can I roll my unused 529 to a Roth IRA?

A Beginning January 1, 2024, 529 assets can be rolled over to a Roth IRA for the designated beneficiary of the 529 plan without taxes or penalties on the 529 distribution if the following conditions are met:

- The 529 account must have been open for at least 15 years.
- The Roth IRA must be in the same name as the 529 plan designated beneficiary.
- The rollover is subject to Roth IRA annual contribution limits.
- The Roth IRA owner must have annual compensation at least equal to the amount of the rollover. However, Roth IRA income limits do not apply to a rollover from a 529 to a Roth IRA.
- Rollovers will be limited to the aggregate contributions made to the 529 account (and any earnings) before the 5-year period ending on the date of the rollover.
- There is a lifetime rollover cap of $35,000 per 529 account beneficiary.

Will this be considered a rollover or a contribution to a Roth IRA?

A Regarding how this rollover is coded for tax purposes, we are awaiting guidance.

5. Defined Contribution Plans Student Loans

Are plan sponsors required to include a student loan match provision?

A No. There is no requirement for plans to adopt a student loan match provision. This is an optional plan feature.

Does the student loan match provision apply to both federal and private loans?

A Yes. Both federal and private student loan payments can be treated as an elective deferral for purposes of matching contributions under this provision.

How does a student loan match impact regular matching contributions under the plan?

A Qualified student loan payments may be treated as elective deferrals for purposes of calculating the plan's match contribution. Qualified student loan repayments cannot be treated as elective deferrals to the extent — when combined with actual deferrals made to the plan — they exceed the annual IRS limit (402(g)) or other plan limits.

Can parties who co-sign and/or make payments on a qualified student loan claim a matching contribution?

A The legislation is unclear on whether a co-signer, spouse or dependent can receive a matching contribution based on repayments to a qualified education loan. Regulatory clarification is needed to determine eligible recipients of a student loan matching contribution.

6. Defined Contribution Plans Emergency Expense Withdrawal

What is the dollar limit/frequency limitations for emergency expense withdrawals and whether distributed amounts can be repaid?

A Only one (1) emergency expense withdrawal is permitted per calendar year, which may not exceed the lesser of $1,000 or the excess of the individual's vested benefit over $1,000. No further amounts may be treated as an emergency personal expense distribution during the immediately following three calendar years unless such previous distribution is fully repaid, directly by the participant or through elective deferrals and after-tax contributions.

What are the differences between an emergency savings withdrawal and a hardship withdrawal?

A Withdrawals for emergency expenses are not subject to the 10% early withdrawal penalty tax and can be taken for family emergency expenses. Unlike a hardship withdrawal, emergency expense withdrawals can be repaid.

How are withdrawals from an emergency savings account taxed, and are they subject to any penalties?

A Emergency savings account contributions must all be made on a Roth after-tax basis. Additionally, the SECURE 2.0 Act makes clear that emergency withdrawals from such accounts are considered to automatically meet the Roth qualified distribution guidelines, regardless of how long the contributions have been in the emergency savings account. Therefore, withdrawals from an emergency savings account, including any earnings in the emergency savings account that may be part of the withdrawal, are not subject to taxes or penalties, irrespective of how long the account has been open.

What options do participants have for recontributing withdrawals from an emergency savings account?

A There is no provision to recontribute or rollover withdrawals from in-plan emergency savings accounts. However, if the emergency savings account balance drops below the $2,500 maximum due to withdrawals, additional amounts may be contributed if they do not cause the total emergency savings account balance to exceed $2,500.

Highly compensated employees (HCEs) are not eligible to participate in an emergency savings account. What happens if a participant becomes an HCE after contributing to an emergency savings account?

A If a participant become an HCE, they cannot make additional contributions to the emergency savings account, but they may retain the emergency savings account and can take withdrawals.

Does the cash-out provision increase from $5,000 to $7,000 change the $1,000 force-out?

A No, the $1,000 force-out remains the same.

7. SEP and SIMPLE Plans

If an employer has a SIMPLE plan and they switch to a safe harbor 401(k), is that considered a "new" plan for purposes of the plan startup credits? Or does an employer having a SIMPLE preclude credits?

A The legislative language says that you cannot have had a "qualified employer plan" in the prior three years. The cross reference to the plan types that are defined as "qualified" includes SEPs and SIMPLE IRAs.

How do you open a SEP for a domestic employee?

A There is no special account opening process for a SEP for a domestic employee. Before the passage of SECURE 2.0 Act, there was a penalty for non-business contributions to a SEP IRA. There was an exception for contributions like this to SIMPLE plans particularly to enable contributions for household employees, but it did not cover SEPs. The SECURE 2.0 Act provision expands the exception to include SEPs and allows individuals who employ domestic help but are not otherwise a "business," to contribute to a SEP established by their domestic employee.

Can small employers who established a new plan in 2022 take advantage of the enhanced small employer startup credits up to the first five years of the plan in 2023, 2024, 2025 and 2026 (the second, third, fourth and fifth years of their plan)?

A It appears that recently established plans, even if established prior to 2023, could take advantage of the credits in the remaining years of the available credit.

8. Individual Retirement Accounts (IRAs)

What is the change regarding catch-up contributions for IRAs?

A Beginning after 2023, the IRA catch-up contribution limit will be indexed for inflation. The limit will be increased in increments of $100 as announced by the IRS. There is no change this year.

What is the change regarding qualified charitable distributions (QCDs)?

A SECURE 2.0 indexes the $100,000 limit, and the new, one-time $50,000 limit, to inflation for taxable years beginning after 2023. SECURE 2.0 added a one-time election for QCDs to split interest entity. The provision would expand the IRA charitable distribution provision to allow for a one-time, $50,000 distribution to charities through charitable gift annuities, charitable remainder unitrusts and charitable remainder annuity trusts. This is a complicated provision, and individuals should consult with a tax professional to understand the implications for their situation.

Can individuals distribute both a $100,000 QCD and the one-time $50,000 QCD to a split-interest entity in the same year?

A Yes. The new one-time $50,000 split-interest QCD is in addition to the old $100,000 QCD, and both could be done in the same year.

What is the timeframe individuals have to repay a distribution that was taken for a qualified birth or adoption distribution (QBAD)?

A 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. This new deadline is effective for any QBAD distributions made after December 29, 2022. For distributions prior to this date, the deadline is 12/31/2025.

What is the change regarding the 10% early withdrawal penalty on removal of excess contributions?

A The SECURE 2.0 provision clarifies that the 10% early distribution tax does not apply to the withdrawal of net income on excess IRA contributions returned by the due date of the individual's tax return (including extensions). The provision applies to any determination of, or affecting liability for, taxes, interest or penalties that is made on or after the date of enactment (December 29, 2022), without regard to whether the act (or failure to act) upon which the determination is based occurred before the date of enactment.

Are Roth IRAs still subject to income eligibility requirements?

A SECURE 2.0 did not adjust income eligibility requirements for Roth IRA contributions.

How does SECURE 2.0 affect inherited IRAs?

A SECURE ACT 2.0 of 2022 did not provide clarity on inherited IRA distribution rules.

Q: Do individuals need to provide any additional documentation supporting a distribution from an IRA due to one of the new provisions such as domestic abuse, emergency use or terminal illness?

A: IRA account owners can self-identify that they have experienced an unforeseeable or immediate financial need for purposes of an emergency expense distribution or that they are a victim of domestic abuse. To be exempt from the early withdrawal penalty, individuals with a terminal illness must obtain a physician's certification, which may or may not be required to be provided to the IRA custodian or trustee, pending further regulatory guidance.

9. Individual Retirement Accounts Required Mandatory Distributions

Q: What is the change to the RMD age?

A: Effective 1/1/2023, the new required beginning date (RBD) is April 1 of the year after you turn age 73. Individuals are required to take an RMD by December 31 each year after that. If individuals delay their first RMD until April 1 in the year after they turn 73, they will be required to take two RMDs in that year. Individuals may be subject to additional taxes if RMDs are missed. SECURE 2.0 also provides that, beginning in 2033, the age will ultimately increase to 75.

Q: What if my client turned 72 in 2022?

A: Individuals who turned 72 in 2022 are not affected. They would be subject to rules in effect in 2022 and continue taking RMDs. If someone who turned 72 didn't satisfy the RMD in 2022, they will need to take it by 4/1/23 and satisfy the 2023 RMD by 12/31/2023.

Q: What if my client turns 72 in 2023 and took an RMD?

A: As they would not be subject to RMDs due to SECURE 2.0 changes, this would be considered a normal distribution, and they could roll the RMD back into their IRA within 60 days. Keep in mind, only one indirect rollover can be performed per rolling 12-month period.

Q: If my client turned age 72 in 2022 but was waiting to take their first required mandatory distribution (RMD) payment before the 4/1/2023 deadline, would their deadline be pushed to 4/1/2024 because they turned age 73 in 2023?

A: No. The pre-SECURE 2.0 rules would apply, and their 2022 RMD would be due by 4/1/2023.

Q: What is the reduction in penalty for a missed RMD?

A: 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 were previously subject to a 50% excise tax penalty on the amount that should have been removed but was not. SECURE 2.0 has reduced that excise tax penalty to 25%. The new law also provides an opportunity to further reduce the tax to 10%. This requires that the taxpayer take the missed RMD amount 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 excise tax imposed is assessed; 3) the last day of the second taxable year after the tax was imposed. This change is effective for all taxable years beginning after December 29, 2022. Individuals can apply to the IRS for a waiver of the excise tax under certain circumstances and should consult a tax professional accordingly.

Q: What are the changes affecting RMDs and special needs trusts?

A: SECURE 2.0 clarifies that in the case of a special needs trust established for certain beneficiaries (e.g., a beneficiary with a disability), the trust is permitted to include a charitable remainder beneficiary and still qualify for extended inherited IRA payout as eligible designated beneficiary.

Your Bank of America Client Service Manager or Client Relationship Manager will assist you with this process, including establishing the timeline required to ensure the applicable plan changes are made ahead of your plan year.

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