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SECURE 2.0 is Congress's Retirement Enhancement Encore

Retirement legislation has been a welcome area of bipartisan cooperation in the U.S. Congress, marked by a history of Republican and Democratic bill co-sponsorship and support. A recent example is the Setting Every Community Up for Retirement Enhancement Act—the SECURE Act—passed and signed into law in 2019. The SECURE Act has been hailed as the most important retirement enhancement legislation in more than a decade.

But rather than being the last word in retirement savings enhancement, the SECURE Act has instead served as a springboard. Even as federal regulatory agencies continue to release guidance on its many provisions, the SECURE Act of 2019 has been followed by a package of several bills, which have collectively been dubbed “SECURE 2.0.” These bills were eventually combined into a single bill, titled The SECURE 2.0 Act of 2022. This bill was included in the Consolidated Appropriations Act of 2023, which was signed into law on December 29, 2022.

This high-level summary addresses some of the SECURE 2.0 Act's key provisions, including these provisions, which take effect this year. (Click on the provisions just below for quick access to each summary.)

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More Employer Plan Options and Contribution Opportunities

Larger Catch-Up Contributions. Participants who attain age 60, 61, 62, and 63 during a given taxable year may make additional “catch-up” salary deferral contributions to 401(k) plans, 403(b) plans, governmental 457(b) plans, SAR-SEP plans, SIMPLE IRA plans, and SIMPLE 401(k) plans.

For plans other than SIMPLE plans, eligible participants may contribute up to the greater of \$10,000 or 150 percent of the regular catch-up amount for 2024 (indexed). For SIMPLE plans, the maximum catch-up contribution amount is increased to the greater of \$5,000 or 150 percent of the regular catch-up amount for 2025 (indexed). (*Effective for 2025 and later taxable years.*)

New Employer Matching Contributions on Student Loan Payments. Employers that offer 401(k) plans, 403(b) plans, SIMPLE IRA plans, and governmental 457(b) plans may provide a matching contribution based on a participant's “qualified student loan payments.”

To be considered a qualified student loan payment, the payment must be made by a participant to repay a qualified education loan that was incurred by the participant to pay qualified higher education expenses. In addition, the total

amount of the participant's qualified student loan payments cannot exceed 1) the participant's compensation, or 2) the deferral limit under Internal Revenue Code Section (IRC Sec.) 402(g), whichever is less. The combined total of the participant's qualified student loan payments and elective deferrals cannot exceed the IRC Sec. 402(g) limit.

For an employer contribution to be treated as a matching contribution on a qualified student loan payment, the same eligibility and vesting requirements must apply to the matching contributions made on account of both the elective deferrals and the qualified student loan payments. Matching contributions on student loan payments must also be made at the same rate as matching contributions on elective deferrals. For ADP testing purposes, employers may test participants who receive matching contributions on qualified student loan payments separately from other participants. *(Effective for 2024 and later plan years.)*

Retroactive First-Year Elective Deferrals for Sole Proprietors. A provision in the SECURE Act of 2019 allowed qualified retirement plans to be adopted as late as the employer's tax filing deadline, *including extensions*. Employers, however, could still only make their elective deferrals prospectively, beginning with the plan's establishment date and before compensation was received. Under SECURE 2.0, sole proprietors and owners of single-member LLCs who establish new 401(k) plans will have until their tax return deadline, *excluding extensions*, for the initial plan year to make their elective deferrals. *(Effective for plan years beginning after December 29, 2022.)*

New Deferral-Only "Starter" 401(k) and 403(b) Plans. SECURE 2.0 creates two new types of plan designs: a "starter 401(k)" and a "safe harbor deferral-only 403(b) plan." Employers who currently do not maintain any other retirement plan under which current contributions are made (or benefits accrue) are generally eligible to establish a starter 401(k) plan or a safe harbor 403(b) plan. These deferral-only plans must contain an automatic enrollment feature that allows participants to defer up to \$6,000 (\$7,000 for those age 50 or older), indexed for cost-of-living adjustments. The automatic enrollment rate must be at least 3 percent, but cannot exceed 15 percent, of the employee's compensation. All employees that meet the minimum age and service requirements common to 401(k) and 403(b) plans generally must be permitted to participate—and contributions must be limited to elective deferrals.

In exchange for these limitations, starter 401(k) plans and safe harbor 403(b) plans are exempt from, or are deemed to satisfy, the nondiscrimination requirements that would ordinarily apply. *(Effective for 2024 and later plan years.)*

Certain 403(b) Plans May Participate in MEPs and PEPs. In general, 403(b) plans that are sponsored by nonprofits, charities, and educational institutions may now participate in a multiple employer plan (MEP), including a pooled employer plan (PEP). This provision also directs the Treasury Department to issue regulations and model plan language. Relief from the "one bad apple" rule will also be available to 403(b) plans participating in a MEP. *(Effective for 2023 and later plan years.)*

New Option to Treat Employer Contributions as Designated Roth Contributions. Participants may choose, plan permitting, to treat employer matching and nonelective contributions to qualified 401(a) defined contribution plans, 403(b) plans, and governmental 457(b) plans, as designated Roth contributions. This option is also available to matching contributions made on qualified student loan payments. Employer contributions treated as designated Roth contributions must be 100-percent vested in order to be treated as designated Roth and are not excludable from gross income. *(Effective for contributions made after December 29, 2022.)*

Additional Employer SIMPLE Plan Contributions Permitted. The current SIMPLE IRA and SIMPLE 401(k) plan rules generally require employers to make a 3 percent match or a 2 percent nonelective contribution. Under SECURE 2.0, employers may now make additional nonelective contributions to all eligible employees who have at least \$5,000 of compensation from the employer for the year. These contributions must be a uniform percentage of employee compensation and cannot exceed the lesser of 1) 10 percent of the employee's compensation, or 2) \$5,000 per employee (indexed). *(Effective for 2024 and later taxable years.)*

Enhanced SIMPLE Plan Deferral Limit. Participants may be able to contribute more to their SIMPLE IRA and SIMPLE 401(k) plans. For employers with 25 or fewer employees who received at least \$5,000 of compensation from the employer for the preceding year, the limits on annual employee deferrals to a SIMPLE plan and the catch-up contribution limit for individuals age 50 or older are increased to 110 percent of the respective limit for 2024, indexed in later years. Employers with 26 to 100 employees who received at least \$5,000 of compensation from the employer for the preceding year may elect to apply the increased limits. But to do this, they must also provide additional employer contributions (i.e., a 4 percent matching contribution or a 3 percent nonelective contribution). These options are not available if the employer has maintained a qualified 401(a) plan, 403(a) plan, or 403(b) plan under which contributions

were made or benefits accrued at any time in the three previous taxable years. *(Effective for 2024 and later taxable years.)*

New Roth Feature in SEP and SIMPLE IRA Plans. Employers may allow employees to treat SEP or SIMPLE IRA employer contributions and elective deferrals as Roth contributions. Prior rules allowed only pretax contributions. *(Effective for 2023 and later taxable years.)*

Retroactive Amending Allowed to Increase Plan Benefits. Employers will generally have until their tax return due date, plus extensions, to retroactively amend their stock bonus, pension, and profit sharing plans in order to increase benefits (other than matching contributions). Employers can then treat the amendment as having been adopted on the last day of the immediately preceding plan year. *(Effective for 2024 and later plan years.)*

New and Enhanced Tax Credits

Enhanced Small Employer Plan Start-Up Credit. For small employers (those with up to 50 employees), SECURE 2.0 increases the maximum credit amount from 50 percent of qualified plan start-up costs to 100 percent. The definition of “plan start-up costs” and the three-year period over which the start-up credit is applicable do not change. This provision also provides for an additional tax credit for a percentage of employer contributions made to employees whose compensation does not exceed \$100,000 for the year. Small employers may receive the full additional credit, which cannot exceed \$1,000 per eligible employee and is phased out over a five-year period.

The additional credit is phased out for employers with 51 to 100 employees. Specifically, the amount of the credit will be *reduced* by an amount equal to 2 percent for each employee that exceeded the 50-employee limit in the prior year. *(Effective for 2023 and later taxable years.)*

New Small Employer Start-Up Credit When Joining a MEP. Employers joining an existing MEP (including a PEP) are now eligible to receive the small employer tax credit—regardless of how long the MEP has been in existence. *(Effective for 2020 and later taxable years.)*

Enhancing Retirement Plan Participation

Expanded Automatic Enrollment. Beginning in 2025, employers who have more than 10 employees and have been in business for three or more years must implement an automatic enrollment provision for a 401(k) plan or 403(b) plan established on or after December 29, 2022. The initial deferral percentage must be at least 3 percent, but cannot exceed 10 percent. The percentage must automatically increase each year by 1 percent until reaching at least 10 percent (but not exceeding 15 percent). Non-safe harbor plans cannot exceed a 10 percent deferral rate for plan years ending before January 1, 2025. Automatically enrolled participants may affirmatively elect to defer a higher or lower percentage, or may choose not to defer. This provision does not apply to church or governmental plans. *(Effective for 2025 and later plan years.)*

Accelerated Part-Time Employee Participation. Effective for 2021 and later plan years, SECURE 1.0 allows employees who have three consecutive 12-month periods with at least 500 hours of service (and who are age 21 or older) to make elective deferrals in their employer’s 401(k) plan. SECURE 2.0 allows otherwise eligible employees to enter their employer’s 401(k) or ERISA-covered 403(b) plan after **two** consecutive 12-month periods in which they work 500 hours or more. The three-year requirement under SECURE 1.0 applies until the two-year requirement under SECURE 2.0 takes effect in 2025. *(Effective for 2025 and later plan years.)*

Miscellaneous Employer Plan Provisions

New Emergency Savings Accounts Linked to Defined Contribution Plans. Employers may offer a pension-linked emergency savings account (PLESA) to non-highly compensated employees as part of their 401(k) plan, 403(b) plan, or governmental 457(b) plan. Participants may contribute up to \$2,500 (or less if dictated by the plan). If the PLESA’s account balance exceeds this amount, the employer may deposit future contributions into the participant’s designated Roth account, or the participant may stop contributing until the account balance falls below the limit.

These contributions are designated Roth contributions. If the employer makes matching contributions to the plan, the employee’s contributions to the PLESA must be matched at the same rate as other deferrals—but must not be placed in the PLESA. Employers may allow employees to opt in or may automatically enroll employees, but the automatic deferral rate cannot exceed 3 percent of compensation. Employers must also allow participants to take PLESA

distributions at least once a month and may not apply fees or charges solely on the basis of the withdrawal for the first four distributions taken during a plan year. *(Effective for 2024 and later plan years.)*

No RMDs for Designated Roth Accounts. Similar to Roth IRAs, designated Roth account assets in 401(k), 403(b), and governmental 457(b) plans will no longer be subject to pre-death RMD rules. Although this provision takes effect in 2024, participants who have their first RMD due in 2023 and choose to take it on or after January 1, 2024, must still include any designated Roth assets when calculating their 2023 RMD. *(Effective for 2024 and later taxable years.)*

Certain Catch-Up Salary Deferrals Must be Treated as Roth Contributions. Salary deferral contributions to 401(k), 403(b), and governmental 457(b) plans that are considered “catch-up” contributions must be made on a Roth basis for participants whose prior-year compensation from the sponsoring employer exceeds \$145,000 (indexed). This provision does not apply to so-called “special catch-up” contributions to 403(b) or governmental 457(b) plans. *(Effective for 2024 and later taxable years.)*

New Paper Plan Benefit Statement Requirement. Employers must provide retirement plan benefit statements in paper form once annually for defined contribution plans and once every three years for defined benefit plans. A paper statement is generally not required if the “wired at work” or the consent methods under the existing DOL electronic delivery safe harbor are met. In order to deliver statements electronically, employers must first provide a one-time paper notice both to participants who first become eligible to participate and to beneficiaries who first become eligible to receive benefits after December 31, 2025. The DOL is also required to make changes to its existing electronic delivery regulations by the end of 2024. The regulations must comply with these new requirements and must contain additional changes that apply to electronic delivery of notices and disclosures. *(Effective for 2026 and later plan years.)*

Increased Cash-Out Limit for Terminated Participants. When a participant separates from service, the employer may choose to distribute (i.e., cash out) the participant’s vested account balance without consent if the balance is under a certain dollar limit. Currently, employers must directly roll over account balances that exceed \$1,000—but that do not exceed \$5,000—to an IRA, unless directed otherwise by the participant or beneficiary. SECURE 2.0 increases the limit from \$5,000 to \$7,000. *(Effective for distributions made after December 31, 2023.)*

New Retirement Savings Lost & Found. This provision requires the creation of a searchable, online database that former participants and beneficiaries can use to search for retirement plan benefits that they may be entitled to. To help keep the database current, plan administrators will be required to provide information to the DOL on a regular basis. *(Effective two years after the enactment date.)*

Provisions Affecting Employer Plans and IRAs

Another Delay for RMDs. SECURE 2.0 further increases the RMD age from age 72 to age 73 in 2023, and then to age 75 in 2033 (or the year of retirement, if later, for certain employer plan participants who are not 5 percent owners). Individuals born in 1950 or earlier are unaffected by this change and must take any RMDs due for 2022 and later years.

This provision is effective for distributions required in 2023 and later years, for those who reach age 72 after December 31, 2022.

Enhanced Saver’s Credit. SECURE 2.0 revises the Saver’s Credit by making it a government-paid matching contribution. Taxpayers will claim the credit on their tax return and the matching contribution will be deposited to a Traditional IRA or to the pretax deferral account of a 401(k) plan, 403(b) plan, or governmental 457(b) plan. This Saver’s Match, which is paid regardless of tax liability, is equal to 50 percent of a taxpayer’s qualified retirement savings contributions (up to \$2,000), until a taxpayer’s modified adjusted gross income reaches a given threshold, at which point the 50 percent matching percentage is phased out. *(Effective for 2027 and later taxable years.)*

Penalty-Free, Repayable Emergency Distributions. Individuals will be allowed to take one distribution per year of up to \$1,000 to pay for expenses related to an unforeseeable or immediate personal or family emergency. Individuals may self-certify their eligibility for such distributions, which may be taken from IRAs, 401(a) plans, 403(b) plans, and governmental 457(b) plans (SECURE 2.0 creates a new distributable event for employer plans.) In addition, these distributions are exempt from the 10 percent early distribution penalty tax and generally may be repaid within a three-year period. *(Effective for distributions made after December 31, 2023.)*

Provisions Affecting IRAs and IRA-Like Accounts

Increased IRA Catch-Up Contributions. Currently, the maximum IRA catch-up contribution amount for individuals age 50 or older is \$1,000 (not indexed). Catch-up contributions will now be indexed for inflation (in \$100 increments), as are regular IRA contributions. *(Effective for 2024 and later taxable years.)*

Limited IRA Disqualification for Prohibited Transactions. This provision clarifies that if an individual has multiple IRAs and engages in a prohibited transaction, only the IRA in which the prohibited transaction occurred will be disqualified. *(Effective for 2023 and later taxable years.)*

Expanded ABLE Account Eligibility. SECURE 2.0 expands the eligibility age for establishing an Achieving a Better Life Experience (ABLE) account, used to finance future expenses of special-needs individuals. The age by which blindness or a disability must occur in order for an individual to be an eligible individual for ABLE account purposes is increased from age 26 to age of 46. *(Effective for 2026 and later taxable years.)*

529 Plan-to-Roth IRA Rollovers. 529 plan beneficiaries may roll over amounts from their 529 account to a Roth IRA under certain conditions. To be eligible to roll over funds to a Roth IRA, 1) the 529 account must have been in existence for 15 or more years, and 2) the funds to be rolled over must have been in the 529 account for at least five years. In addition, the 529 plan beneficiary must have earned income (similar to the Roth IRA eligibility requirements) in order to make a rollover contribution. The rollover amount in any given year cannot exceed the beneficiary's IRA contribution limit, reduced by any IRA contributions previously made for the year. The total (lifetime) rollover amount is limited to \$35,000. *(Effective for distributions occurring after December 31, 2023.)*

Amendment Guidance

Employers generally need to amend their retirement plans by the last day of the plan year beginning on or after January 1, 2025. (SECURE 2.0 made technical corrections to the previous December 31, 2025, amendment deadline for the SECURE Act of 2019, the CARES Act, and the Taxpayer Certainty and Disaster Relief Act of 2020.)

Employers of governmental plans and collectively bargained plans must amend their plans by the last day of the plan year beginning on or after December 31, 2027.

IRA trust and custodial documents must generally be amended by the end of 2025—or another date specified by the IRS when it releases revised IRA model plan agreements and updated prototype IRA procedures.

Stay Tuned

It is unusual for two pieces of major retirement legislation—the SECURE Act of 2019 and the SECURE 2.0 Act of 2022—to be enacted in such rapid succession. This represents a significant accomplishment in bipartisanship that will continue to create change throughout the retirement industry.

As with any such legislation, questions will arise as provisions are examined in detail. Visit [FuturePlan.com](https://www.futureplan.com) for additional analysis on the legislation itself, and on subsequent regulatory agency guidance.