The SECURE Act 2.0— Key Provisions Affecting Retirement Plans

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March 8, 2023

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Agenda

- CEFLI's Antitrust Policy.
- Recording of event, access to the presentation materials and receipt of a Certificate of Attendance.
- Presentation.
- Questions.
- Reminders.

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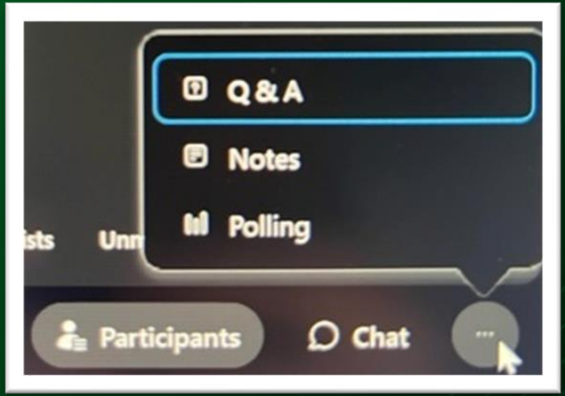

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Presenter

Fred Reish is a partner in the international law firm of Faegre Drinker Biddle & Reath, LLP. His practice focuses on fiduciary responsibility, prohibited transaction and plan qualification issues. He has been recognized as one of the "legends" of the retirement industry by both PlanSponsor and PlanAdviser magazines. He has also been given lifetime achievement awards by Institutional Investor and PlanSponsor publications and received recognition by the Internal Revenue Service for his contributions to the retirement community.

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The SECURE Act 2.0 Overview

The SECURE Act 2.0 was included in the Consolidated Appropriations Act, 2023.

The Appropriations Act is over 4,000 pages long, and the SECURE Act 2.0 is approximately 350 of those pages. The SECURE Act 2.0 includes over 90 provisions that will affect almost all private sector retirement arrangements and that have varying effective dates. This program covers many of the most impactful changes.

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Annuity Related Provisions

2023: RMD Relief for Life Annuities

The Act amends the Internal Revenue Code, effective December 29, 2022 to provide that the following types of annuity payments will not violate the RMD requirements:

- Annuity payments that increase by a constant percentage that is less than 5% per year.
- Lump sum payments that:
  - Result in a shortening or full or partial commutation of future annuity payments, or
  - Accelerate the receipt of annuity payments to be received within the next 12 months.
- A dividend or similar payment which is reasonably determined
- A final payment on death which does not exceed the total consideration paid for the annuity, less the aggregate payments under the annuity.

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2014: Qualifying Longevity Annuity Contracts

The Act materially changes how the RMD rules apply to QLACs:

- The 25% limit is eliminated and the $125,000 limit is increased to $200,000 (to be adjusted for future cost of living increases). (Effective for contracts issued or exchanged on or after December 29, 2022.)
- Compliance with the joint and survivor requirements is facilitated in the event of divorce—essentially if the former spouse is entitled to the survivor benefits and is otherwise treated as the surviving spouse.
- Recission of the QLAC is permitted within 90 days of purchase.

Effective for contracts purchased or exchanged on or after July 2, 2014.

2023: Eliminating a Penalty on Partial Annuitization

The Act amends the Code’s requirement for calculating RMD amounts for partially annuitized accounts by calculating the annuity part and the remaining asset part separately.

The new provision permits the beneficial owners of tax-preferred retirement accounts to aggregate distributions from the annuity part of the account and the non-annuity part for satisfying the amounts that need to be distributed under the RMD rules.

The change is effective on enactment--December 29, 2022.

2024: Clarification of Substantially Equal Periodic Payment Rule

The Act clarifies that, for purposes of the “substantially equal periodic payment” exception to the 10% penalty tax on early retirement account distributions, transfers and rollovers between tax-advantaged plans, 1035 exchanges, and payments from annuities that satisfy the RMD rules will not be treated as “modifications” to the payment stream.

This provision is effective for transfers, rollovers and exchanges after December 31, 2023.

Provisions That Are Effective Now

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2023: Mandatory Automatic Enrollment for Private Sector 401(k) and 403(b) Plans

For plan years beginning after December 31, 2024, newly established 401(k) and private sector 403(b) plans must automatically enroll their eligible employees and provide for annual automatic deferral increases. New and very small employers are excepted (discussed later).

The initial deferral rate must be at least 3% of compensation, but not more than 10%. Each year thereafter, the deferral rate must be increased at least 1% per year—to at least 10%, but no more than 15%.

Employees can opt out of deferring and/or change their deferral rates.

Mandatory Automatic Enrollment for Private Sector 401(k) and 403(b) Plans

The accounts of defaulting participants must be invested in a QDIA, qualified default investment alternative.

The requirement does not apply until plan years beginning after December 31, 2024; however:

- It will not apply to 401(k) and 403(b) plans established before the enactment date (December 29, 2022), but

- It will apply to plans established on or after the enactment date, but they do not need to be “auto” until their plan years beginning after December 31, 2024.

Mandatory Automatic Enrollment for Private Sector 401(k) and 403(b) Plans

Some plans are excepted from these requirements:

- Government and church plans.
- New businesses: The requirement will not apply until a new business has been in existence for more than three years.
- Small businesses: The requirement will not apply until one year after the taxable year in which the employer had more than 10 employees.
- MEPs and PEPs: The requirement will not apply to the MEP or PEP as a whole, but it will apply to adopting employers as if they were adopting a single employer plan after the enactment date.

2023: Increase in Age for RMDs

Under current law, the law requires minimum distributions beginning at age 72. The Act further increases the ages.

- If a person attains age 72 after December 31, 2022, the new RMD beginning age is 73.
- For a person who attains age 74 after December 31, 2032, the RMD beginning age will be 75.

2023: Credit for Small Plan Start Up Costs

The current three-year start up credit is 50% of the **administrative costs**, up to $5,000.

Effective for tax years beginning after December 31, 2022, that percent is increased to 100% for employers with up to 50 employees, and 50% for employers with between 51 and 100 employees.

There must be at least one non-highly compensated eligible employee.

The credit is calculated as $250 per non-highly compensated eligible employee, with a minimum of $500 and a maximum of $5,000.

Credit for Small Plan Start-Up Costs

Also effective for tax years beginning after December 31, 2022, the Act adds a new **credit for contributions** made by employers (except for defined benefit plans). The credit is a percent of the contributions made by the employer for the participants up to $1,000 per participant:

- The credit is 100% for the first 2 years, 75% in the 3rd, 50% in the 4th, 25% in the 5th, and nothing after that.
- An employer gets 100% of the available credit if it has up to 50 employees and the credit phases out up to 100 employees.
- The credit does not apply to contributions for employees who make over $100,000 in a year (adjusted for cost of living).

Credit for Small Plan Start-Up Costs

The start-up credits are available to employers who set up (i) qualified retirement plans, (ii) SIMPLE IRA arrangements and (iii) SEP IRA arrangements.

The credits are available for qualifying employers who set up single-employer arrangements or who join PEPs or MEPs.

2023: Multiple Employer 403(b) Plans

SECURE Act 2.0 amends the Internal Revenue Code to create a new type of 403(b) plan sponsored by multiple qualifying employers.

The new provision includes Multiple Employer Plans (MEPs) and Pooled Employer Plans (PEPs).

The 403(b) PEP provisions for non-governmental plans closely parallel the requirements for qualified plan PEPs, for example, the plan must have a pooled plan provider (PPP).

The provision is effective for plan years beginning after December 31, 2022.

2023: Employer Contributions as Roth Contributions

Effective on enactment, defined contribution plans can allow participants to elect to receive matching and nonelective contributions on a Roth basis, if the contributions are fully vested.

Effective in 2024

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2024: Emergency Savings Accounts

Effective for plan years beginning after December 31, 2023, individual account plans may offer "pension-linked emergency savings accounts" to their non-highly compensated eligible employees.

The savings account can only accept employee deferrals and those deferrals are treated as Roth contributions.

The arrangement can either be affirmative enrolled or automatically enrolled. The contribution rate for automatic enrollment cannot exceed 3%.

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Emergency Savings Accounts

Participating employees can contribute to the savings account until the portion of the account attributable to the contributions reaches $2,500 (adjusted for cost-of-living) or a lower amount stated in the plan.

The savings contributions are treated as elective deferrals for purposes of matching contributions. A plan sponsor must match at the same rate as for elective deferrals. However, matching contributions are first allocated to the elective deferrals. Only after that would the savings deferrals be matched.

The matching contributions on savings must be put in the plan's matching account (and not in the savings account).

Emergency Savings Accounts

A plan must allow for withdrawals at least once per month and the distributions must be made as soon as practicable after a request.

Plans cannot charge withdrawal/distribution fees for the first 4 withdrawals in a plan year. For additional withdrawals in a plan year, a reasonable fee can be charged.

It appears that, for income tax purposes, withdrawals will be treated the same as withdrawals from any Roth accounts. However, the Code §72(t)(2) additional tax on early distributions will not apply to withdrawals.

Emergency Savings Accounts

The emergency savings account must be invested in an interest-bearing account or, at the option of the plan sponsor, in an investment product that (i) is designed to maintain the dollar value of the invested amount, (ii) bears a reasonable rate of return, and (iii) is issued by a State- or Federally-regulated financial institution.

The Act specifies the disclosures that must be given to participants.

The Act includes a provision pre-empting any State laws that would conflict with the abilities of plans to institute the savings arrangements.

2024: Starter 401(k) Plans

An employer that does not sponsor a retirement plan can offer a "starter 401(k) plan" or "safe harbor 403(b) plan" under a new provision that is effective for plan years beginning after December 31, 2023. These starter plans will be deemed to satisfy the discrimination and top-heavy tests.

A starter 401(k) or safe harbor 403(b) is a deferral-only plan that automatically enrolls all eligible employees in the plan at a deferral rate of at least 3%, but no more than 15%.

The limit on deferrals is the same as the IRA contribution rate (which, for 2022, is $6,000 for regular deferrals and $1,000 for catch-ups—beginning at age 50). The limits will be adjusted for cost-of-living.

2024: Matching Contributions for Student Loans

Plan sponsors can amend their plan documents to permit matching contributions for “qualified student loan payments” (QSLP) for plan years beginning after December 31, 2023. A QSLP is broadly defined as any indebtedness incurred by the employee solely to pay higher education expenses of the employee.

- The employer can rely on an employee certification of payment.
- The match must be the same as for participant deferrals.
- The discrimination testing can be done on the basis of all participants or just those matched for QSLPs.

2024: New Roth Treatments

- Roth Plan Distribution Rules: The RMD rules for Roth accounts in retirement plans are conformed to the Roth IRA rules, that is, RMDs are not required to begin until the death of the participant. (Effective for tax years beginning after December 31, 2023.)

- Roth Treatment for Catch-Up Contributions: Catch-up contributions must be treated as Roth contributions for employees with compensation of more than $145,000 (indexed). (Effective for tax years beginning after December 31, 2023.)

2024: Additional Provisions

- Retirement Savings Lost and Found: A new ERISA provision requires that, within two years after enactment, the DOL establish a searchable database to locate administrators of ERISA retirement plans in which the individual was a participant or beneficiary.
- Mandatory Distributions: The $5,000 limit is increased to $7,000 effective for distributions after December 31, 2023.

Effective in 2025 and Later

2025: Higher Catch-Up Contribution Levels

The Act increases the limits on catch up deferrals for participants ages 60, 61, 62, and 63 for years after December 31, 2024.

The limit for catch up deferrals to qualified retirement plans for 2021 was $6,500. The limit will increase to the greater of (i) $10,000 or (ii) 150% of the cost-of-living adjusted amount available to other participants in 2024 (*e.g.*, 2021's $6,500 limit as increased for cost-of-living).

The $10,000 limit will be increased for cost-of-living adjustments beginning in 2026.

Specifically, the higher limit is available to a "participant who would attain age 60 but would not attain age 64 before the close of the taxable year."

2025: Long-Term Part-Time Employees

The SECURE Act 1.0 required 401(k) plans to include long-term, part-time workers (at least 500 hours and three consecutive years) in the plans for purposes of deferrals (but did not require employer contributions or matches).

The SECURE Act 2.0 reduces the three-year requirement to two years effective for plan years beginning after December 31, 2024.

SECURE Act 2.0 also extends the long-term, part-time coverage rules to ERISA 403(b) plans.

Additional Selected Provisions

- 2025: Plan Amendments: Conforming amendments may be made by the last day of the first plan year beginning on or after January 1, 2025, if the plan operates in accordance with those amendments.
- 2027: Saver's Match: The nonrefundable saver's credit is converted to a refundable match for contributions to IRAs and retirement plans. The match is 50% of the contribution up to $2,000. The full match applies to lower income taxpayers, *e.g.*, modified adjusted gross income of $41,000 with a phase out up to $71,000. (Effective for taxable years beginning after December 31, 2026.)

Questions

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Reminders

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