# The Consolidated Appropriations Act, 2023

# SECURE 2.0


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## Part I.
## SECURE Act

**A Review**

The **Setting Every Community Up for Retirement Enhancement Act** of 2019, better known as the **SECURE Act**, which originally passed the House in July 2019, was approved by the Senate on Dec.19, 2019, as part of an end-of-year appropriations act and accompanying tax measure, and signed into law on Dec. 20, 2019, by former President Donald Trump.

The far-reaching bill included significant provisions aimed at increasing access to tax-advantaged accounts and preventing older Americans from outliving their assets.

- **The SECURE Act became law on December 20, 2019, and makes it easier for small business owners to set up "safe harbor" retirement plans that are less expensive and easier to administer.**
- **Many part-time workers are eligible to participate in an employer retirement plan.**
- **The SECURE Act pushed forward the age at which retirement plan participants need to take required minimum distributions (RMDs), from 70½ to 72, and allows traditional IRA owners to keep making contributions indefinitely.**
- **The SECURE Act mandates that most non-spouses inheriting IRAs take distributions that end up emptying the account within 10 years.**
- **The SECURE Act allows 401(k) plans to offer annuities.**

### I. A Troubled Retirement System

A. That there's trouble brewing in the U.S. retirement system, which requires most workers to supplement Social Security with personal savings, has been widely acknowledged.

B. According to data from the U.S. Bureau of Labor Statistics published in 2020, only 55% of the civilian adult population participates in a workplace retirement plan and even those who do are often woefully behind when it comes to investing part of their paycheck.

C. The wealth management giant Vanguard, for instance, revealed early in 2019 that the median 401(k) balance for those ages 65 and older is just \$58,035.3

D. The SECURE Act aims to encourage employers who have previously shied away from these plans, which can be expensive and difficult to administer, to start offering them.

***Tax Professional's Alert:*** ***417 – 3 was the margin by which the SECURE Act passed in the U.S. House of Representatives in May 2019.***

E. "With passage of this bill, the House made significant progress in fixing our nation's retirement crisis and helping workers of all ages save for their futures," Rep. Richard E. Neal (D-Massachusetts) said in a statement after the bill sailed through the House in May of 2019.

## II. The Senate

A. Despite the SECURE Act's overwhelming support in the House, it didn't get through the Senate until it was attached to the appropriations and tax-extender bills that passed the day after President Trump was impeached in the House of Representatives.

B. In early July 2019, *Planadviser* reported that two Republican senators—one of them Ted Cruz (R-Texas)—were holding it up. According to a Washington insider, Cruz was trying to tweak the section on 529 accounts so that parents can use them for home-schooling expenses as well.

C. In October 2019, *Plansponsor* quoted Chris Spence, TIAA's senior director of government relations, as saying the bill has been sitting "in something like legislative limbo." Along with Cruz, two other senators—Mike Lee and Pat Toomey—had reservations about some technical points. Spence was optimistic and predicted correctly that the route to passage could be through being attached to a broader bill that had to be passed by the end of 2020.

## III. Major Provisions of the SECURE Act

The SECURE Act tweaked a number of rules related to tax-advantaged retirement accounts. Here's what it did:

1. Mades it easier for small businesses to set up 401(k)s by increasing the cap under which they can automatically enroll workers in "safe harbor" retirement plans from 10% of wages to 15%.

2. Provided a maximum tax credit of $500 per year to employers who create a 401(k) or SIMPLE IRA plan with automatic enrollment.

3. Enabled businesses to sign up part-time employees who work either 1,000 hours throughout the year or have three consecutive years with 500 hours of service.

4. Encouraged plan sponsors to include annuities as an option in workplace plans by reducing their liability if the insurer cannot meet its financial obligations.

5. Pushed back the age at which retirement plan participants need to take required minimum distributions (RMDs) from 70½ to 72.

6. Allowed the use of tax-advantaged 529 accounts for qualified student loan repayments (up to $10,000 annually).

7. Permitted penalty-free withdrawals of $5,000 from 401(k) accounts to defray the costs of having or adopting a child.

8. Encouraged employers to include more annuities in 401(k) plans by removing their fear of legal liability if the annuity provider fails to provide, and also not requiring them to choose the lowest-cost plan.

9. One other key change in the bill was paying for all of this: the removal of a provision known as the stretch IRA, which has allowed non-spouses inheriting retirement accounts to stretch out disbursements over their lifetimes.

10. The new rule requires a full payout from the inherited IRA within 10 years of the death of the original account holder, raising an estimated 15.7 billion in additional tax revenue.

## IV. The Impact

A. **Impact on IRAs:** The SECURE Act's impact on retirement accounts like IRAs and 401(k)s will be significant. Eric Bronnenkant, CPA, CFP®, Head of Tax at Betterment, outlines what will change and how it will impact savers.

B. **Inherited IRAs:** The parts of the SECURE Act that will most immediately impact average Americans are its new guidelines around inherited IRAs. So let's say you inherited a retirement plan like an IRA or a 401(k) as a non-spouse beneficiary. Under the old rules, you were able to withdraw from that retirement account over the rest of your life, but under the SECURE Act, you'll have to take that money out within 10 years. Basically, through the SECURE Act, you're compelled to pay taxes sooner. Those who saved a lot of money in their 401(k) or IRA, and hope to leave that money to a non-spouse beneficiary, might want to rethink their strategy on who they choose as a beneficiary, recognizing this new, shorter timeframe.

***<u>Tax Professional's Alert:</u>***

*SECURE Act*

***In 2019, the SECURE Act changed the rules for distributing assets from an inherited IRA. With its passage, most non-spouse beneficiaries who inherited IRA assets on or after Jan. 1, 2020, are required to withdraw the full balance of the account within 10 years. This includes adult children and grandchildren and most other designated beneficiaries.***

*Previously, if you inherited an IRA, or a 401(k) that you converted into an inherited IRA, you could "stretch" your account distributions — and the related tax obligations — over your life expectancy.*

*The SECURE Act eliminated the "stretch" provision and replaced it with the new 10-year payout rule.*

*It's important to note that the SECURE Act does not say beneficiaries must withdraw a certain amount, or a certain percentage, of the account balance in each of the 10 years. In other words, it does not dictate RMDs. The law just says you must empty an inherited IRA account by the end of the 10th year following the year of the original IRA owner's death. As such, it was interpreted by many advisors to allow for a decade's worth of tax deferral by waiting until the final year to make any withdrawals.*

*Note, however, that the SECURE Act allows for some exceptions to the 10-year payout rule. It does not apply to the following categories of beneficiaries:*

- *An IRA owner's spouse*
- *An IRA owner's minor child*
- *Someone not more than 10 years younger than the IRA owner*
- *Someone disabled or chronically ill (as defined by the IRS)*

*Proposed IRS Regulations*

*In February 2022, the IRS issued 275 pages of proposed regulations interpreting the SECURE Act. Beneficiaries need to be ready for any new position the regulations may take on RMDs.*

*Under the proposed regulations, if you inherit an IRA from someone who had already passed their required beginning date for RMDs, you can't wait until year 10 to withdraw the full inherited IRA account balance and benefit from 10 years of tax deferral. Beneficiaries would have to take annual distributions in years 1 to 9 and the remaining balance in year 10. In other words, the position of the IRS is that once an IRA owner has begun taking annual RMDs, the beneficiary must continue taking RMDs based on the SECURE Act 10-year payout rule.*

*Typically, the IRS will finalize regulations within a year or two after releasing the proposed regulations and reviewing public comments. It is not clear when to expect final regulations and whether the IRS intends to finalize the regulations as proposed or to alter them to reflect the current interpretation under the SECURE Act.*

**Notice 2022-53 – Certain Required Minimum Distributions for 2021 and 2022**

**This notice announces that the Department of the Treasury and the Internal Revenue Service intend to issue final regulations related to required minimum distributions (RMDs) under section 401(a)(9) of the Internal Revenue Code that will apply no earlier than the 2023 distribution calendar year.**

C. **IRA Contributions:** The SECURE Act will also impact traditional IRA contributions. Under the old rules, you had to be under age 70½ in order to contribute to a traditional IRA, but under the SECURE Act, anybody of any age can make a traditional IRA contribution. Of course, you still need to be able to demonstrate earned income (like from working at a job or self-employment), but before the SECURE Act, if you were 85 years old and still working, you wouldn't have been able to contribute to a traditional IRA. Now, you'll still be able to contribute, no matter what your age: workers over age 70½ can now make traditional IRA contributions, which also potentially allows them to make backdoor Roth IRA contributions.

D. **Impact on Student Debt:** The SECURE Act also allows people to withdraw up to $10,000 during their lifetime from their 529 plans, tax-free, in order to pay off their student loan debt. Originally, 529 plans were strictly for post-secondary education expenses, but that has been expanded to include K-12 expenses.

***Tax Professional's Alert:* Under the SECURE Act, 529 funds can be used to pay off college debt. That said, not all states may allow the student loan benefit to come out tax-free at the state level.**

## IV. Review: Successor Beneficiary RMD Rules after the Death of the Original Inherited Retirement Account's Primary Beneficiary

1. **Prior to the passage of the SECURE Act, Designated Beneficiaries of retirement accounts were allowed to 'stretch' RMDs from the account over their own life expectancies.**
2. **The SECURE Act eliminated the stretch option for most non-spouse Designated Beneficiaries, and instead, requires the account ot be emptied by the end of the 10th year following the year of the original owner's death.**
3. **The SECURE Act, also created a new category of beneficiaries – Eligible Designated Beneficiaries – that is still permitted to use the "stretch" provision.**
4. **Any of these beneficiaries could, themselves, die prior to emptying their inherited retirement accounts, leaving the balance to a Successor Beneficiary.**
5. **There are now three potential scenarios for Successor Beneficiaries of inherited retirement accounts:**
   a. **Successor Beneficiaries of post-SECURE Act Eligible Designated Beneficiaries,**

**b. Successor Beneficiaries of pre-SECURE Act Designated Beneficiaries, and**
**c. Successor Beneficiaries of post SECURE Act Non-Eligible Designated Beneficiaries.**

**Examples:**
**a and b, above, Successor Beneficiaries will generally be subject to the full 10-Year Rule. One exception to this is if the post-SECURE Act Eligible Designated Beneficiary (or pre-SECIRE Act Designated Beneficiary) is the surviving spouse of the original account owner and dies before the decedent would have been required to begin taking RMDs.**

**In such cases, upon death, they are no longer to be considered a "Designated Beneficiary" of the account, but instead, are treated as if they had been the original account owner. The Successor Beneficiary would not be treated as a Successor Beneficiary and would not be automatically subject to the 10-Year Rule.**

**If they were able to qualify as an Eligible Designated Beneficiary, they would qualify to take advantage of the "stretch" provisions.**

**c above – Successor Beneficiaries who inherit from post-SECURE Act Non-Eligible Designated Beneficiaries are, like other Successor Beneficiaries, subject to the 10-Year Rule; however, unlike other Successor Beneficiaries, they will not have their 'own' 10-Year timeframe.**

**Instead, their distribution period is a continuation of the 10-Year period that started when the Successor Beneficiary inherited the account.**

**For a Designated Beneficiary who 'stretched' RMDs and lives for a long time yet still dies with a substantial account balance, their Successor Beneficiary may have been left with only a few short years to distribute the remaining assets had it been under pre-SECURE Act rules, they would have been required to use the original beneficiary's remaining Single Life Expectancy Table. (At the end of the material.)**

**The 10-Year Rule of the SECURE Act allows these Successor Beneficiaries up to 10 full years to distribute their accounts.**

## V. The Bottom Line

The prior rules weren't allowing nearly enough Americans to put away the nest egg they'll ultimately need for a secure retirement.

Part II.

## The Consolidated Appropriations Act, 2023 SECURE2.0

## Introduction

On Thursday, December.29, 2022, President Joe Biden signed H.R. 2617 into law.

H.R. 2617, the "Consolidated Appropriations Act, 2023", making consolidated appropriations for the fiscal year ending September 30, 2023, and for providing emergency assistance for the situation in Ukraine and for other purposes.

The cost of this legislation - $1.7 trillion. It runs more than 4,000 pages.

While the Act includes the retirement bill SECURE 2.0, it leaves out tax provisions for business and individuals, most notably the expanded child tax credit.

The legislation includes $772.5 billion for non-defense discretionary programs and $858 billion in defense funding.

The package includes $45 billion in emergency assistance to Ukraine and NATO allies. About $9 billion of the funding would go to Ukraine's military to pay for a variety of things including training, weapons, logistics support and salaries. Nearly $12 billion would be used to replenish United States stocks of equipment sent to Ukraine through presidential drawdown authority. It also provides $13 billion for economic support to the Ukrainian government. Other funds would address humanitarian and infrastructure needs, as well as support the European Command operations.

It boosts spending for disaster aid, college access, childcare, mental health and food assistance, more support for the military and veterans and additional funds for the United States Capitol Police.

It also includes several major Medicaid provisions, including one that could disenroll up to 19 million people from the nation's health insurance program for low-income Americans.

It left out several measure that some lawmakers had fought to include:

> Expansion of the child tax credit;
> Multiple corporate and individual tax breaks;
> The "Safe Banking Act" which would allow cannabis companies to bank their cash reserve;
> A bill to help Afghan evacuees in the United States to gain lawful permanent residency; and
> A final resolution on where the new FBI headquarters will be located.

## Part III.
## **What Does the Consolidated Appropriations Act, 2023 Include**

I. $1.7 trillion is appropriated for the following:

A. **Emergency disaster assistance**: The law provides more than $38 billion in emergency funding to help Americans in the west and southeast affected by recent natural disasters, including tornadoes, hurricanes, flooding and wildfires. It will aid farmers, provide economic development assistance for communities, repair and reconstruct federal facilities and direct money to the Federal Emergency Management Agency's Disaster Relief Fund, among other initiatives.

***<u>Tax Professional's Alert</u>: The FEMA website is www.fema.gov.***

B. **Overhaul of the electoral vote-counting law**: A provision in the legislation aims at making it harder to overturn a certified presidential election.

The changes overhaul the 1887 Electoral Count Act..

The legislation clarifies the vice president's role while overseeing the certification of the electoral result to be completely ceremonial. It also creates a set of stipulations designed to make it harder for there to be any confusion over the accurate slate of electors from each state.

C. **Funding for January 6 attack prosecutions**: The law provides $2.6 billion for US Attorneys, which includes funding efforts "to further support prosecutions related to the January 6 attack on the Capitol and domestic terrorism cases," according to a fact sheet from the House Appropriations Committee.

The package also gives $11.3 billion to the Federal Bureau of Investigation, including for efforts to investigate extremist violence and domestic terrorism.

The funding measures are part of nearly ***$39 billion for the Justice Department.***

D. **Retirement savings enhancements**: The law contains new retirement rules that could make it easier for Americans to accumulate retirement savings - and less costly to withdraw them. Among other things, the provisions will allow penalty-free withdrawals for some emergency expenses, let employers offer matching retirement contributions for a worker's student loan payments and increase how much older workers may save in employer retirement plans.

<u>**SECURE 2.0** will be addressed separately</u>..

E. **TikTok** ban from federal devices: The legislation bans TikTok, the Chinese-owned short-form video app, from federal government devices.

***Tax Professional's Alert:*** ***Some lawmakers have raised bipartisan concerns that China's national security laws could force TikTok - or its parent, ByteDance- to hand over the personal data of its US users. Recently, a wave of states led by Republican governors have introduced state-level restrictions on the use of TikTok on government-owned devices.***

F. **Protections for pregnant workers**: The law provides pregnant workers with workplace accommodations - such as additional bathroom breaks, stools or relief from heavy lifting duties - needed for healthy pregnancies. It will prevent them from being forced to take leave or losing their jobs, as well as bar employers from denying employment opportunities to women based on their need for reasonable accommodations due to childbirth or related medical conditions. Also, another provision in the package guarantees workplace accommodations·- particularly time to pump - for more nursing workers.

G. **Changes to Medicaid and other health care programs**: The law phases out the requirement that prevented states from disenrolling Medicaid recipients as long as the national public health emergency was in effect in exchange for an enhanced federal match. This continuous coverage measure was enacted as part of a Covid-19 relief package passed in March 2020 and has led to a record 90 million Medicaid enrollees, many of whom will no longer meet the income requirements to qualify.

Under the law, states will be able to start evaluating Medicaid enrollees' eligibility and terminating their coverage as of April 1. The redetermination process will take place over at least 12 months. Also, the enhanced federal Medicaid funding will phase down through December 31, 2023, though the states will have to meet certain conditions during that period.

***Tax Professional's Alert:*** ***Up to 19 million people could lose their Medicaid benefits, according to estimates, though many would be eligible for other coverage.***

Also, under a provision in the law, Medicaid and the Children's Health Insurance Program, known as CHIP, will offer 12 months of continuous coverage for children. This will allow the 40 million children on Medicaid and CHIP to have uninterrupted access to health care throughout the year.

In addition, the law makes permanent the option for states to offer 12 months of postpartum coverage for low-income mothers through Medicaid, rather than just 60 days. More than two dozen states, plus the District of Columbia, have implemented the measure, which was available on a temporary basis through the American Rescue Plan, according to the Kaiser Family Foundation. Another seven states are planning to implement the option.

***The package provides more money for the National Institutes of Health, the Centers for Disease Control and Prevention and the Assistant Secretary for Preparedness and Response. The funds are intended to speed the development of new therapies, diagnostics and preventive measures, beef up public health activities and strengthen the nation's biosecurity by accelerating development of medical countermeasures for pandemic threats and fortifying stockpiles and supply chains for drugs, masks and other supplies.***

H. **Increased support for the military and veterans:** The package funds a 4.6% pay raise for troops and a 22.4% increase in support for Veteran Administration medical care, which provides health services for 7.3 million veterans.

It includes nearly $53 billion · to address higher inflation and $2.7 billion - a 25% increase - to support critical services and housing assistance for veterans and their families.

The law also allocates $5 billion for the Cost of War Toxic Exposures Fund, which provides additional funding to implement the landmark PACT Act that expands eligibility for health care services and benefits to veterans with conditions related to toxic exposure during their service.

I. **Nutrition assistance**: The legislation establishes a permanent nationwide Summer EBT program, starting in the summer of 2024, according to Share Our Strength, an anti-hunger advocacy group. It will. provide families whose children are eligible for free or reduced-price school meals with a $40 grocery benefit per child per month, indexed to inflation.

It also changes the rules governing summer meals programs in rural areas. Children will be able to take home or receive delivery of up to 10 days' worth of meals, rather than have to consume the food at a specific site and time.

The law also helps families who have had their food stamp benefits stolen since October 1 through what's known as "SNAP skimming." It provides them with retroactive federal reimbursement of the funds, which criminals steal by attaching devices to point-of-sale machines or

PIN pads to get.card numbers and other information from electronic benefits transfer cards.

J. **Higher maximum Pell grant awards**: The law increases the maximum Pell grant award by $500 to $7,395 for the coming school year. This marks the largest boost since the 2009-2010 school year. About 7 million students, many from lower-income families, receive Pell grants every year to help them afford college.

K. **Help to pay utility bills**: The package provides $5 billion for the Low-Income Home Energy Assistance Program. Combined with the $1 billion contained in the earlier continuing resolution, this is the largest regular appropriation for the program, according to the National Energy Assistance Directors Association. Home heating and cooling costs - and the applications for federal aid in paying the bills - have soared this year.

L. **Additional funding for the US Capitol Police**: The law provides an additional $132 million for the Capitol Police for a total of nearly $735 million. It will allow the department to hire up to 137 sworn officers and 123 support and civilian personnel, bringing the force to a projected level of 2,126 sworn officers and 567 civilians.

It also gives $2 million to provide off-campus security for lawmakers in response to evolving and growing threats.

M **Money for childcare**: The legislation provides $8 billion for the Child Care and Development Block Grant, a 30% increase in funding. The grant gives financial assistance to low-income families to afford childcare.

Also, Head Start will receive nearly $12 billion, an 8.6% boost. The program helps young children from low-income families prepare for school.

N **More resources for children's mental health and for substance abuse:** The law provides more funds to increase access to mental health services for children and schools. It also will invest more money to address the opioid epidemic and substance use disorder.

O. **Investments in homelessness prevention and affordable housing**: The legislation provides $3.6 billion for homeless assistance grants, a 13% increase. It will serve more than 1 million people experiencing homelessness.

The package also funnels nearly $6.4 billion to the Community Development Block Grant formula program and related local economic and community development projects that benefit low- and moderate income areas and people, an increase of almost $1.6 billion.

Plus, it provides $1.5 billion for the HOME Investment Partnerships Program, which will lead to the construction of nearly 10,000 new rental and homebuyer units and maintain the record investment from the last fiscal year.

P. **More support for the environment:** The package provides an additional $576 million for the Environmental Protection Agency, bringing its funding up to $10.1 billion. It increases support for enforcement and.compliance, as well as clean air, water and toxic chemical programs, after years of flat funding.

It also boosts funding for the National Park Service by 6.4%, restoring 500 of the 3,000 staff positions lost over the past decade. This is intended to help the agency handle substantial increases in visitation.

The legislation provides an additional 14% in funding for wildland firefighting.

II. A summary of the Appropriations Provisions by Subcommittee is separate to the material included in this presentation.

**Part IV.**

**SECURE 2.0**

I. The original SECURE Act was passed in late 2019.

**SECURE 2.0,** par\ of the Consolidated Appropriations Act, 2023, has 92 new provisions to promote savings, boost incentives for businesses, and offer more flexibility to those saving for retirement.

They include:

**Mandatory Automatic Enrollment,**

**Credit for Small Employer Pension Plan Startup Costs,**

**Enhancement of the Saver's Credit;** ·

**Increase in Starting Age for Required Minimum Distributions (RMDs),**

**Indexing -IRA Catch-Up Amounts,**

**Higher Catch-Up Limits for Age 61, 62, 63, and 64,**

**Student Loan Payments as Elective Deferrals for Matching Contributions, Startt Up Credit Costs for Employers Joining an Existing Plan,**

**Financial Incentives for Contributing to a Plan,**

**Withdrawals for Certain Emergency Expenses,**

**SIMPLE Plan Changes,**

**Starter 401(k) Plans,**

**Section 529 Plan to Roth Rollovers,**

**Emergency Savings Accounts,**

**Enhancement of 403(b) Plans,**

**Qualified Charitable Distributions to Split Interest Entity, and**

**Retirement Savings Lost and Found.**

***Tax Professional's Alert:*** ***While the original SECURE Act did not include ROTH provisions, SECURE 2.0 includes a significant number of ROTH-related changes, both involving ROTH IRAs as well as ROTH accounts in employee retirement plans.***

II. Three Key Components

A. Required Minimum Distribution, RMD, age is raised to 73 and eventually to age 75.

1. RMDs were required to be taken at age 72.
2. The withdrawal amount is based on a calculation dictated by factors such as account value and age longevity.
3. SECURE 2. Raises the RMD starting age in two tiers.
4. **Beginning in 2023 the RMD starting age is 73 and in 2033 the RMD starting age is 75.**

***Tax Professional's Alert:*** ***Individuals who turn 73 in 2023 must take their first distribution no later than April 1, 2024. The distribution for subsequent years would need to be made by December 31, of that year.***

***Taxpayers who delay their first withdrawal until early 2024 would need to mate two distributions in 2024, one for 2023 and one for 2024.***

***It should be noted that in 2033, when age 75 comes into play, the legislation actually double dips into the 73 by January 1 and 75 by January 1. A "technical correction" will be required on this age dispute.***

***<u>Tax Professional's Alert 2:</u> Taxpayers who can afford not to tap into their retirement accounts to fund their lifestyles will benefit.***

***Medicare premiums are tied to income, and distributions from pretax retirement accounts may raise a taxpayer's income. Delaying that income can keep premiums lower for longer.***

B. Eliminating RMDs from a ROTH 401(k)

5. Beginning in 2024, investors in employer retirement plans such as ROTH 401(k) accounts, will no longer have to take RMDs.

6. The change aligns ROTH 401(k)s with ROTH IRAs, which do not require distributions during the taxpayer's lifetime.

7. Employers will be allowed to make a matching contribution to a ROTH versus pretax account.

C Reducing the RMD Penalty

8. The Internal Revenue Service assesses a penalty when taxpayers who fail to withdraw the full amount of their RMD or who do not take a distribution by the annual deadline.

9. SECURE 2.0 reduces the tax penalty to 25 per cent, from the 50 per cent on the RMD amount that was not withdrawn.

10. If a taxpayer corrects their mistake in a timely fashion, the penalty is 10 percent.

***<u>Tax Professional's Alert:</u> If the account owner withdraws the RMD amount previously not taken and submits a corrected tax return in a timely manner the 10% penalty will apply. The taxpayer may still appeal the penalty for "reasonable cause".***

III. SECURE 2.0 Provisions

**A. SIMPLE ROTH IRAs and SEP ROTH IRAs**

1. Taxpayers will have 2 new opportunities for ROTH contributions. More specifically, **Sec. 601 of SECURE Act 2.0** authorizes the creation of both SIMPLE ROTH accounts, as well as SEP ROTH IRAs, for **2023 and beyond.**

2. Previously. SIMPLE and SEP plans could only include pre-tax funds.

***Tax Professional's Alert:*** ***Although individuals technically have the legal ability to create and contribute to ROTH SIMPLE and SEP IRA accounts beginning January 1, 2023, it will likely take at least some time before employers, custodians, and the IRS are able to implement the procedures and policies necessary to actually effectuate such contributions. Specifically, SECURE Act 2.0 only authorizes the use of SIMPLE and SEP ROTH IRAs after an election has been made to do so, and that such election must he in a manner approved by the IRS.***

### B. Employer Contributions

1. **Section 604 of SECURE Act 2.0** expands available options for getting money into ROTH accounts.

2. Effective upon enactment, employers will be permitted to deposit matching and/or nonelective contributions to employees' designated ROTH accounts (e.g., ROTH accounts in 401(k) and 403(b) plans). **Such amounts will be included in the employee's income in the year of contribution, and must be nonforfeitable (i.e., not subject to a vesting schedule).**

***Tax Professional's Alert:*** ***While SECURE Act 2.0 authorizes such contributions immediately upon enactment, employers and plan administrators will need time to update systems, paperwork, and procedures to accommodate the change. It may take some time before employers actually have the ability to direct contributions in such a manner.***

### C. ROTH Option Required for Catch-Up Contributions (High-Wage Earners)

1. **Section 603 of SECURE Act 2.0** creates a mandatory ***'Rothification'*** of catch-up contributions for certain high-income taxpayers starting in 2024..

2. The new rule applies to catch-up contributions for 401(k), 403(b), and governmental 457(b) plans, but *not* to catch-up contributions for **IRAs, including SIMPLE IRAs.**

3. **From SECURE Act 2.0. Section 603:**

*(A) IN GENERAL-Except as provided in subparagraph (C). in the case of an eligible participant whose* ***wages (as defined in sectio11 312/(a)) for the*** *preceding calendar pear from. the employer. sponsoring the plan exceed* ***$145,000,*** *paragraph (l) shall apparently only if any additional elective deferrals are designated Roth contributions (as defined in section 402A(c)(J ))*

*made pursuant to an employee election. {Emphasis added]*

***<u>Tax Professional's Alert:</u> The ROTH restriction on catch-up contributions imposed by SECURE Act 2.0 only applies to those who have wages in excess of $145,000, in the preceding calendar year, which will be adjusted for inflation in the future, It would appear that self-employed individuals such as sole proprietors and partners, would continue to have the opportunity to make pre-tax catch-up contributions, even if their income from self-employment is higher than $145,000.***

***<u>Tax Professional's Alert 2:</u> While 40l(k) and similar plans can include a ROTH component, they are not required to do so.***

***What happens when employees who are required to make ROTH catch-up contributions, those whose previous-year wages exceeded $145,000, are unable because their employers do not have a ROTH option in their retirement plan?***

***The Act says that if the plan does not allow individuals to make catch-up contributions to a ROTH account, the catch-up contribution rules will not apply to that plan, for both those with wages above and below the applicable $145,000 threshold. In other words, if an employer's plan includes employees eligible to make catch-up contributions and who earned over $145,000 in the previous year, but if the plan didn't include a ROTH catch-up contribution option, then no one would be allowed to make catch-up contributions, regardless of their previous-year wages.***

D. **529 Plan to ROTH IRA Transfers Allowed After 15 Years (Limited)**

1. Beginning in 2024, for some individuals the ability to move 529 plan money directly into a ROTH IRA.

2. This new transfer, created by **Section 126 of SECURE Act 2.0,** will be an option for some individuals, but it also comes with a number of conditions that must be satisfied for the transfer to be valid and that limit the ability to take advantage of the provision.

3. The conditions include:
   a. The Roth IRA receiving the funds must be in the name of the ***beneficiary*** of the 529 plan;
   b. The 529 plan must have been **maintained for 15 years or longer**;
   c. Any contributions to the 529 plan within the last **5 years** (and the earnings on those contributions) are **ineligible** to be moved to a ROTH IRA;
   d. The annual limit for how much can be moved from a 529 plan to a ROTH IRA is the IRA contribution limit for the year, *less any 'regular' traditional IRA or ROTH IRA contributions that are made for the year.* **There will be no double up with funds from outside the 529 plan.**; and

e. The maximum amount that can be moved from a 529 plan to a ROTH IRA during an individual's **lifetime is $35,000.**

4. The SECURE 2.0 does not address the issue of change in beneficiaries.

***<u>Example:</u>* Beanna is the beneficiary of a 529 plan account that has excess funds she will not need for school, and the account has been open for more than 15 years.**

***In 2024, Beanna contributes $4,000 of her own earned income to a ROTH IRA. As such, assuming the IRA contribution limit for 2024 remains at the $6,500 limit for 2023, the owner of Beanna's 529 plan could transfer up to another $6,500 - $4,000 = $2,500 into her ROTH IRA for the year.***

***<u>Tax Professional's Alert:</u>* There are a number of restrictions on the ability to move 529 plan money to a ROTH IRA, Section 126 of SECURE Act 2.0 also offers an advantage of 529 plan-to-ROTH IRA transfers compared to 'regular' ROTH IRA contributions.**

***More specifically, individuals are generally prohibited from making regular ROTH IRA contributions once their Modified Adjusted Gross Income, MAGI, exceeds an applicable threshold. Transfers of funds from 529 plans to ROTH IRAs, authorized by SECURE Act 2.0, however, will <u>not be subject to the same income limitations.</u>***

**E. New Post-Death Option for Surviving Spouse Beneficiaries of Retirement Accounts**

1. Under existing law, when a surviving spouse inherits a retirement account from a deceased spouse, they have a variety of options at their disposal that are not available to any other beneficiary (e.g., rolling the decedent's IRA into their own, electing to treat the decedent's IRA as their own, and remaining a beneficiary of the decedent's IRA, but with special treatment).

2. **Beginning in 2024, Section 327 of SECURE Act 2.0** will extend the list of spouse-beneficiary-only options further by introducing the ***ability to elect to be treated as the deceased spouse.***

3. Making such an election would provide the following benefits to the surviving spouse:
   a. RMDs for the surviving spouse would be delayed until the deceased spouse would have reached the age at which RMDs begin;

b. Once RMDs are necessary (the year the decedent would have reached RMD age, had they lived), the surviving spouse will calculate RMDs using the **Uniform Lifetime Table** that is used by account owners, **rather than the Single Lifetime Table** that applies to beneficiaries; and

c. **If the surviving spouse dies before RMDs begin**, the surviving spouse's beneficiaries will be treated as though they were the ***original* beneficiaries** of the account (which would allow any Eligible Designated Beneficiaries to 'stretch' distributions over their life expectancy instead of being stuck with the 10-Year Rule that would otherwise apply).

***Tax Professional's Alert:*** ***While Regulations will be needed to further determine details of this new option, at first glance, it would appear that its primary use case will be for surviving spouses who inherit retirement accounts from a younger spouse. By electing to treat themselves as the decedent, they will be able to delay RMDs longer, and once RMDs do start, they will be smaller than if the spouse had made a spousal rollover or remained a beneficiary of the account.***

## F. IRA Catch-Up Contributions to be Indexed for Inflation

1. The Economic Growth and Tax Relief Reconciliation Act (EGTRA) of 2001 created IRA catch-up contributions; effective for 2002 and future years. Although that law, for the first time, indexed the annual IRA contribution limits to inflation, the catch-up contribution limit was introduced as a flat $500 amount that was not indexed.

2. In 2006, the Pension Protection Act doubled the original IRA catch-up contribution limit to a flat $1,000 but still failed to adjust that cap for inflation in future years.

3. That was the last time Congress raised the limit manually and as such, the IRA catch-up contribution limit remains at the same $1,000 amount at which Congress set it more than 15 years ago.

4. **Section 108 of SECURE Act 2.0** will finally allow the IRA catch-up contribution limit to automatically adjust for inflation, effective starting in 2024. Inflation adjustments will be made in increments of $100,

***Tax Professional's Alert:*** ***A technical error in the SECURE Act 2.0 inadvertently removes the ability for Americans to make catch-up contributions. The legislation to improve Americans' retirement readiness through a wide number of measures, including requiring employers to automatically enroll their workers in 401(k) plans, raising the required minimum distributions age and raising the cap on catch-up contributions, which allows older savers to make additional tax-advantaged contributions above the standard contribution limit – by a further 50% in 2025 for those aged 60 through 63.***

***However, as a result of the elimination of a subparagraph related to a conforming amendment, the legislation instead eliminates the ability to make pre-tax catch-up contributions entirely, starting in 2024.***

***Given the current legislative text, ROTH catch-up contributions would also be in jeopardy.***

***The question is when there will be a legislative vehicle in this Congress to get this done. In the meantime, it is unclear as to whether Treasury has the regulatory authority to ignore this error in the interim which potentially puts 2024 catch-up contributions at risk if Congress does not act before then.***

### G. Increased Plan Catch-Up Contributions for Participants in Their Early 60's

1. Effective for 2025 and in future years, Section 109 of SECURE Act 2.0 increases employer-retirement plan (e.g,, 401(k) and 403(b) plan) catch-up contribution limits for certain plan participants.

   More specifically, participants who **are *only* ages 60, 61, 62, and 63** will have their plan catch-up contribution limit increased to the greater of $10,000, or 150% of the regular catch-up contribution amount (indexed for inflation) for such plans in 2024.

2. Similarly, **SIMPLE Plan** participants who are age **60, 61, 62, or 63** will have their plan catch-up contribution limit increased to the greater **of $5,000 or 150% of the regular SIMPLE catch-up contribution ta**x amount for 2025 (indexed for inflation).

***<u>Tax Professional's Alert:</u> There appears to be confusion over the inclusion of the "greater of $10,000 or 150% of the future (regular) catch-up amount" when 150% of the 2023 catch-up amount is already going to be over $10,000 (as $7,500x 150% =$11,250). Nevertheless, it's clear that beginning in a few years, the group of pre-retirees ages 60-63 will be able to stash away some additional amounts in their 401(k) or similar plan accounts, if they so choose.***

### H. New Rules for Qualified Charitable Distributions, QCDs

1. Since their introduction in 2006 as part of the Pension Protection Act, Qualified Charitable Distributions (QCDs) have quickly become the best way for most individuals 70 ½ or older to satisfy their charitable intentions.

2. The rules for these distributions, for which no charitable deduction is received because the income is excluded from AGI to begin with (which is *much* better, since such income is also excluded for the purposes of calculating the taxable amount of Social Security income and Medicare IRMAA surcharges, among other things), are modified by **SECURE Act 2.0 in the following 2 ways:**

a. Maximum Annual QCD Amount Indexed for Inflation. When the QCD provision was first introduced more than 15 years ago, the maximum annual QCD amount was limited to $100,000. Since then, the maximum amount has remained the same. Beginning in 2024, however, the QCD limit will change for the first time ever as it will be linked to inflation; and
b. **One-Time Opportunity To Use QCD To Fund A Split-Interest** Entity. Beginning in 2023, taxpayers may take advantage of a one-time opportunity to use a QCD to fund a Charitable Remainder UniTrust (CRUT), Charitable Remainder Annuity Trust (CRAT), or Charitable Gift Annuity (CGA).

***Tax Professional's Alert:*** ***At first glance, the ability to fund a CRUT, CRAT, or CGA with a QCD may seem like a significant benefit/or some IRA owners, since it essentially allows them to remove funds from a traditional IRA tax-free to pass on to future generations free of income or estate tax. However, the reality is that there are a lot of strings attached to the provision that make it not quite be the deal it may appear to be at first, especially for those interested in using their IRAs to fund a CRUT or CRAT.***

***The maximum amount that can be moved in this once-in-a-lifetime distribution is $50,000 (to be adjusted for inflation). It would be hard to imagine a scenario where it would be worth a taxpayer's time and expense to set up a CRUT or CRAT for only $50,000.***

***Section 307 of SECURE 2.0 states that a distribution to a CRUT or CRAT will only count as a QCD "if such trust is funded exclusively by qualified charitable distributions".***

***A further limitation says that the only income beneficiaries of such a qualifying CRUT or CRAT can be the IRA owner and their spouse. Accordingly, even if both spouses took full advantage of the one-time $50,000 QCD distribution to fund a split-interest entity, and they used those QCDs to fund the same CRUT or CRAT vehicle, the maximum contributions to the trust, in total, could be no more than $100,000. Again, it's hard to imagine the time, expense, and complexity that comes along with creating and maintaining a CRUT or CRAT being worth it/or such relatively modest contributions.***

***And if all of that wasn't enough to convince you that QCD CRUTs/CRATs are unlikely to make sense to most clients, consider that whereas regular CRUTs and CRATs have the ability to invest in assets that generate long-term capital gains, qualified dividends, or other tax-preferred income whose character is retained when distributed to beneficiaries, all such distributions from CRUTs and CRATs funded with QCDs will be classified as ordinary income!***

***As a result, for taxpayers interested in utilizing the one-time ability to make a QCD***

***of up to $50,000 to fund a split-interest entity, the entity of choice will likely be a Charitable Gift Annuity (CGA). Such entities are created and operated by charities, limiting the associated out-of-pocket costs for taxpayers. Notably, though, CGAs funded via QCDs would be subject to the additional requirements that payments begin no less than 1 year after funding, and such payments are established at a fixed rate of 5% or greater.***

## I. New Rules for Accessing Retirement Funds During Times of Need

1. In general, Section 72 of the Internal Revenue Code imposes a 10% penalty for distributions from retirement accounts taken prior to reaching age 59 ½.
2. Congress is trying to discourage the use of retirement funds for something other than their stated purpose... retirement!

3. Historically, Congress has authorized a limited number of exceptions to the 10% penalty in the event taxpayers have certain expenses (e.g. higher education or deductible medical expenses) or experience certain events (e.g., death or disability) it deems as an acceptable excuse to dip into retirement savings earlier than is generally intended. In recent years,

4. Congress has steadily sought to expand that list via various pieces of legislation, such as the original SECURE Act, the CARES Act, and others.

5. **SECURE Act 2.0** picks up right where those bills left off, expanding the existing list of **10% penalty exceptions**, creating new 10% penalty exceptions, and authorizing other ways for taxpayers to access retirement savings at young (pre-59 ½) ages without a penalty.

6. Such changes include the following:
   a. **Age 50 Exception Expanded To Include Private-Sector Firefighters**

      **Effective immediately, Section 308 of. SECURE Act 2.0** expands the Age 50 Public Safety Worker Exception (which creates an exception to the 10% early withdrawal penalty for individuals who separate from service in the **year they turn 50 or older)** to include **private-sector firefighters**. Accordingly, such taxpayers may take penalty-free distributions from defined contribution and for defined benefit plans maintained by those employers.

   b. **Age 50 Exception Expanded to Include State and Local Corrections' Officers**

**Effective immediately, Section 330 of SECURE Act 2.0** expands the **Age 50 Public Safety Worker Exception** (to the 10% penalty) **to include state and local Corrections officers and other forensic security employees.** Accordingly, such taxpayers may take penalty-free distributions from defined contribution and for defined benefit plans maintained by those specific employers if they separate from.service. at age 50 or older.

c. **Age 50 Exception Expanded to Include Qualifying Workers with 25 or More Yean of Service for An Employer**

**Effective immediately, Section 329 of SECURE Act 2.0** expands the **Age 50 Public Safety Worker Exception** to include plan participants who separate from service before they reach **age 50, but who have performed 25 or more years of service for the employer sponsoring the plan.**

***Tax Professional's Alert:*** ***A reading of the statute (which refers to "the" plan and not "a" plan) would seem to indicate that all 25 years of qualifying service must be for the same employer. It would appear that an individual with 25 years of qualifying service split across 2 employers (e.g., a police officer with 15 years of service for City A, followed by 12 years of service as a police officer for State Z) would be ineligible/or this treatment.***

**J. Permanent Reinstatement of Smaller Qualified Disaster Distributions**

1. From time to time, after certain natural disasters (e.g., hurricanes, wildfires. floods, tornadoes), Congress has, for a limited time, authorized affected individuals to access retirement funds without a penalty.

2. At the time of SECURE Act 2.0's passage, however, **all such provisions had expired.**

3. **Section 331 of SECURE Act 2.0** eliminates the need for Congress to re-authorize such distributions *for* each disaster (or series of disasters) by "permanently" reinstating so-called **"Qualified Disaster Recovery Distributions"** ***retroactively*** **to disasters occurring on or after January 26, 2021.**

4. **To qualify for such distributions,** an individual must have their **principal place of abode within a Federally declared disaster area, and they must generally take their distribution within 180 days of the disaster.**

5. Disaster distributions were historically limited to a maximum of **$100,000, Section 331 of SECURE 2.0** sets the maximum amount of a disaster distribution at 'only' **$22,000.**

6. Such distributions are, however, eligible to be treated similarly to previously authorized disaster distributions in a number of ways.

7. The income from Qualified Disaster Recovery Distributions is able to be spread **evenly over the 3-year period** that begins with the year of distribution (or, alternatively, to elect to include ***all*** of the income from the distribution in income in the year of distribution).

8. **All or a portion of the Qualified Disaster Recovery Distribution may be repaid within 3 years of the time the distribution is received** by the taxpayer.

***Tax Professional's Alert:*** ***Taxpayers may move out of the "disaster" state over the course of 3 years. Moving to a non-tax state may have significant tax savings. Taxpayers should be mindful if a state election must be made along with the federal.***

**K. Creation of Exceptions for Individuals with a Terminal Illness**

1. **Section 326 of SECURE Act 2.0 creates a new 10% penalty exception for terminally ill individuals.**

2. For purposes of this exception, the definition of "**terminally ill" is extremely favorable to taxpayers.**

3. Whereas for most income tax purposes, an individual is only deemed to be "terminally ill" if they have ***"been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 24 months or less"***, for purposes of this exception, that **time frame is expanded to 84 months (7 years).**

4. Such distributions **may be repaid within 3 years.**

**L. Creation of Exception for Victims of Domestic Abuse**

1. Effective for distributions made in **2024 or later, Section 314 of SECURE Act 2.0** authorizes **victims of domestic abuse to withdraw up to the lesser of $10,000 (indexed for inflation) or 50% of their vested balance without incurring a 10% penalty.**

2. To qualify, **the distribution must be made from a defined contribution plan** (other than a defined contribution plan currently subject to the Joint and Survivor Annuity rules under IRC Section 40I(a)(ll) and !RC Section 417) **within the I-year period after an individual has become a victim of such abuse, and all or a portion of the distribution maybe repaid within 3 years.**

3. For purposes of this exception, the term **"domestic abuse"** is defined broadly to mean ***"physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim's ability to reason independently, including by means of abuse of the victim's child or another family member living in the household".***

4. Employer plans and IRA custodians will be able to rely on an **individual's self-certification that they qualify to receive such a distribution.**

**M. Creation of New Emergency Withdrawal Exception**

1. **Section 115 of SECURE Act 2.0** authorizes **"Emergency Withdrawals"** from retirement accounts, **beginning in 2024.**

2. Such distributions will be **exempt from the 10% penalty** and may be taken by any taxpayer who experiences **"unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses."**

3. That is a **broad definition.**

4. Congress chose to limi.t individuals to no more than **1 such distribution per calendar year and to cap such distributions at a maximum of $1,000.**

5. In addition to the $1,000 annual maximum Emergency Withdrawal limit, **plans will also be prohibited from allowing participants to take any subsequent Emergency Withdrawals until the earlier of the following:**
   a. The prior distributions have been ***fully*** repaid;
   b. **'Regular' deferrals and other employe contributions** made to the plan since the Emergency **Withdrawal total at least as much as the amount of the distribution;** or
   c. **3 years have passed since the previous Emergency Withdrawal.**

***<u>Tax Professional's Alert:</u> Ultimately, many people may qualify to take such a distribution at some point during their lives. but the extremely limited dollar amount that is accessible via the new exception will mean that many individuals will likely still need to seek secondary exceptions to try and avoid the 10% early distribution penalty on all necessary distributions.***

### N. Creation of a New Exception for Qualified Long-Term Care Distributions

1. First, effective -for distributions occurring 3 years after the date of enactment, **2026 and future years.,**

2. **Section 334 of SECURE Act 2.0** allows retirement account owners to take penalty-free "Qualified Long-term Care Distributions" of up to **the lesser of 10% of their vested balance, or $2,500 (adjusted for inflation) annually to pay for long-term care insurance.**

3. **To qualify** for the exception, individuals **must have either paid, or have been assessed, long-term care insurance premiums equal to or greater than their distribution in the year the distribution is made, and they must provide their plan with a "Long-Term Care Premium Statement"** containing-.details, such as the name and Tax ID number of the insurance .company, identification of the account owner.as the owner-of the long-term care insurance, a statement that the coverage is certified long-term care insurance, the premiums owed for the calendar year, and the name of the insured individual and their relationship to the retirement account owner.

4. The relationship of the insured individuals to the retirement account owner - **SECURE Act 2.0 permits Qualified Long-Term Care Distributions for the account owner and, provided a joint return is filed, for the retirement account owner's spouse.**

***<u>Tax Professional's Alert:</u> The text may allow for the IRS to include other specified family members by Regulation, but there is no guarantee they will do so. It is likely that such regulations would not be released until at least 2024.***

### O. Relaxation of Certain 72(t) Rules

1. **Section 323 of SECURE Act 2.0** offers 2 items of note with respect to individuals-seeking to use the existing exceptions for Substantially Equal Periodic Payments (SEPPs), better known as 72(1) payments.

2. First, **effective immediately,** it establishes a **safe harbor for annuity payments to meet the 72(t) distribution requirements.** Specifically, the bill states that:

***...periodic payments shall not fail to be treated as substantially equal merely because they are amounts received as an annuity, and such periodic payments shall he deemed to be substantially equal if they are payable over a period described in clause (iv) and satisfy the requirements applicable to annuity payments under section 401(a)(9).***

3. **Effective for 2024 and future years**, the bill creates an exception to the current IRS rule that prevents individuals from making partial rollovers or transfers of accounts from which 72(t) distributions are made.

4. Instead of the current, blanket treatment of such transfers creating a modification (and triggering retroactive 10% penalties on *all* pre-59 ½ distributions taken pursuant to the 72(t) plan}, **taxpayers will be allowed to make such transfers and rollovers provided that total distributions from the 2 accounts after the partial transfer total the amount that would have otherwise been required to have been distributed from the transferring account.**

**<u>Example:</u> Wayne has been taking $40,000 of 72(1) distributions from his brokerage IRA annually using the amortization method (which means his distributions are fixed for the life of the 72(1) schedule). In 2024, Wayne sees an ad for a 5-year CD at a bank paying 6% and decides that he'd like to move a portion of his current IRA to an IRA at the bank to take advantage of the 6% CD rate.**

**Wayne may make a partial rollover/transfer in an amount of his choosing to the hank IRA provided that, after the transfer, he continues to take a combined $40,000 out of a combination of his brokerage IRA and his bank IRA accounts.**

5. It does ***not*** appear that distributions from the 2 accounts must be in proportion to their balances after the transfer. The text of the bill seems to indicate that as long as the total distributions from the 2 accounts equal the correct 72(t) amount, no modification will have occurred.

**P. Expanded Access to Plan Loans for Plan Participants in Disaster Areas**

1. In addition to permanently reinstating Qualified Disaster Recovery

Distributions as described above, **Section 331 of SECURE Act 2.0** also enables affected individuals (with their principal place of abode located within a federally declared disaster area) **to take larger loans from their qualified plans.**

2. Such taxpayers may take **loans of up to 100% of their vested balance**, which are normally limited to the greater of $10,000 or 50% of the participant's vested balance, up to a maximum of $100.000, normally limited to $50,000.

3. **Repayment dates for certain payments may be delayed for 1 year.**

**Q. Creation of Linked Emergency Savings Accounts**

1. Beyond the significantly expanded ability to access retirement funds prior to age 59 ½ without incurring a 10% penalty, to further assist individuals save for unanticipated expenses at any age, **effective in 2024, Section 127 of SECURE Act 2.0 creates a new type of "Emergency Savings Account".**

2. Such accounts will not be **available as standalone individual accounts**, but rather, they will be linked to existing employer plans with individual balances, such as 40l(k) and 403(b) plan accounts.

3. For employees who are eligible to participate in the new Emergency Savings Accounts, **contributions must cease once the balance in the account attributable to contributions-reaches $2,500.**

4. **Balance in account does not include interest for $2,500 limitation.**

5. **Employers may impose lower maximum limits at their discretion.**

6. Highly-compensated employees have limitations.

7. The **Internal Revenue-Service is to issue regulations within 12 months of enactment.**

***<u>Tax Professional's Alert:</u> The account is intended for emergency expenses and SECURE Act 2.0 requires that the assets in such accounts be held in a limited number of principal-protected investments.***

***Plans must accept contributions in any amounts, must allow ai least 1 distribution per month, and may not impose any fees for distributions on at least the first 4***

***distributions from such accounts each year: Distributions will be treated as Qualified Distributions from a designated ROTH account, and will be tax and penalty-free.***

**Example:**

**It is 2024, Jerry's employer chooses to create an Emergency Savings Account for its employees. It is decided that there will be a 3% automatic enrollment.**

**Jerry's compensation is $90,000 per year. Although 3% of $90,000 is $2,700, the employer quit withholding from Jerry's pay when $2,500 went into the account.**

**Jerry's employer can not withhold any additional Emergency Savings contribution until Jerry withdraws from the account his contributions.**

**In 2026 Jerry withdraws $400. In 2026, after the withdrawal, Jerry's employer can withdraw from Jerry's pay and deposit into his Emergency Savings Account $400.**

***Tax Professional's Alert:* *Employer's using payroll service providers will need to monitor these account withdrawals and deposits.***

8. For contribution matching purposes, **employers are required to treat contributions made to a participant's Emergency Savings Account as though they were a salary deferral into their retirement plan.**

9. For individuals who want to prioritize building emergency savings, but who cannot afford to do so while also saving for retirement, this provision allows them to take advantage of employer matching funds in a way that would be unavailable using a standalone account like a bank account.

10. Unless the employee opts out, **employers may also auto-enroll employees in Emergency Savings Accounts and establish a contribution percentage of tip to 3 Per cent of compensation.**

11. Upon reaching the maximum contribution limit, employers may adopt default provisions that either terminate participants' contributions·(•redirect them into a plan ROTH account.

12. It does not appear that such amounts can be redirected to pre-tax plan accounts by default.

**R. Access to ABLE Accounts Expanded to Individuals Disabled at Older Ages**

1. Under current law, ABLE (529A) accounts may only be established for individuals who become disabled prior to turning age 26.

2. **Effective for 2026** ABLE accounts will be able to be established for individuals who become **disabled prior to 46.**

3. It appears that individuals **will not have to be under 46 in 2026** to be eligible for such an account, but rather must only have been under 46 at the time they became disabled.

4. This is significant because many disabilities - and in particular, many mental health conditions that can cause a person to become disabled - develop after age 25, which means that individuals who suffered from such conditions were locked out of saving to an ABLE account under previous law.

**S. Disabled First Responders Eligible to Continue to Exclude Certain Payments from Income After Reaching Retirement Age**

1. **Section 309 of SECURE Act 2.0** provides *significant* income tax relief for certain disabled first responders.

2. **Qualifying First Responders are law enforcement officers, firefighters, paramedics, and Emergency Medical Technicians (EMTs) who receive service-connected disability and retirement pensions.**

3. **Currently**, disabled first responders who receive a disability pension or annuity related to their service are generally able to **exclude those amounts from income.**

4. However, **once they reach their regular retirement age**, their disability pension becomes a retirement pension (similar to the way that disability benefits received from Social Security automatically convert to retirement benefits at Full Retirement Age) **and is no longer excludable from income.**

5. At the proverbial flip of a switch, such **disabled first responders effectively trade a tax-free income stream for a regular taxable pension.**

6. **SECURE Act 2.0** seeks to address this disparity by introducing an **"excludable amount"** that-effectively allows such individuals to carry on the tax-favored disability payment throughout their lifetime.

7. Specifically, **the excludable amount is defined as the income received in the year before retirement age (those who only received payments for part of the year will annualize the amount).**

8. In simple terms, whatever the nominal amount a qualifying first responder received as tax-free payments prior to their retirement age, they will be able to continue receiving as tax-free payments after their retirement age.

9. While this provision **is not effective until 2027**, it does not appear that there is any requirement that payments need to begin after that time to qualify.

10. Many former first responders who are currently receiving taxable retirement benefits! but who previously received tax-free disability payments in connection with their service, **will see a significant increase in net-after-tax income beginning in 2027.**

***<u>Tax Professional's Alert:</u> In perhaps an unanticipated outcome, from the language of Section 331 of SECURE Act 2.0, it seems that if an individual continues to work as a first responder beyond their plan's retirement age and then becomes disabled, they would not be eligible for the same exclusion treatment. Perhaps Congress will address this potential inequity in the future.***

**T. Retroactive First-Year Solo-401(k) Plan Deferrals Allowed for Sole Proprietors**

1. Taxpayers have long been able to create and fund certain SEP IRA accounts after the end of the year (up until the individual tax filing deadline, plus extensions) for the previous year.
2. For instance, a SEP IRA first created in June 2022 could have received contributions for 2021 (even though no plan actually existed at that time)."

3. **The original SECURE Act expanded that retroactive treatment to other employer-only funded plans, such as Profit - Sharing Plans and Pension Plans.**

4. Effective for **plan years beginning after the date of enactment, Section 317 of SECURE 2.0 now takes that ability one step further by allowing sole proprietors, as well as those businesses treated as such under Federal law for income-tax purposes (e.g., Single Member LLCs), to establish and fund solo-40l(k) plans with deferrals for a previous tax year, up to the due date of the individual's tax return (although notably *without* extensions).**

5. Accordingly. **while historically there has not been any urgency to establish solo-401(k) plans early in the year, such consideration should now be given to the extent an individual is a sole-proprietor, and retroactive deferrals for the prior year would be advisable,**

## U. New Relief for Retirement Account Mistakes

For many retirement account owners, **SECURE Act 2.0** includes a host of changes designed to **limit the impact of various retirement account mistakes.**

### 1. Reduction of the 50% Pen3lty for an RMD Shortfall

a. **Effective for 2023 and future years, Section 302 of SECURE Act 2.0 *reduces the 50% penalty for an RMD shortfall to 25%.***

b. If, however, the **shortfall is rectified within the "Correction Window,'" then the penalty is further reduced to only 10%.**

c. Per SECURE Act 2.0, the **"Correction Window"** is defined as beginning on the date that tax penalty is imposed (so, generally January 1 of the. year following the year of the missed RMD), and ends upon the earliest of the following dates:

**When the Notice of Deficiency is mailed to the taxpayer;**

**When the tax is assessed by the IRS; or**

**The last day of the second tax year after the tax is imposed.**

d. Although these changes do not preclude a taxpayer from seeking to have the penalty abated altogether, for smaller missed distributions the timely fixed missed RMD penalty dropping to just 10% may give some individuals an incentive simply to pay the Penalty and move on.

V. **Statute of Limitations for Missed RMDs and, Most, Excess Contributions to be Tied to Form 1040**

e. **Section 313 of SECURE Act 2.0** resolves an issue that has haunted some individuals since a 2011 Tax Court decision.

f. In ***Paschall v Commissioner (137 T.C. 8, 1011),*** the Court ruled that for purposes of assessing IRA penalties, the statute of limitations on such penalties does not begin until Form 5329 - the form on which such penalties are reported is filed.

g. The problem, though, is that if you don't realize a mistake has been made, you have no reason to file Form 5329, and thus such mistakes generally have an indefinite statute of limitations.

h. In an effort to simplify matters and to provide some finality to taxpayers who have made certain mistakes with their retirement accounts **effective immediately, the statute of limitations 'clock' for an RMD shortfall (technically referred to as a tax on "excess accumulations"), as well as for most excess contributions, will begin ticking with the filing of Form 1040 for the year in question (rather than Form 5329).**

i. Furthermore, **to the extent that an individual is not required to file Form 1040, the statute of limitations 'clock' for such penalties will begin ticking upon the tax filing deadline.**

j. **Section 313 of SECURE Act 2.0** further specifies that for **purposes of assessing the penalty for an RMD shortfall, the statute of limitations is 3 years.**

By contrast, the **statute of limitations for assessing the penalty for excess contributions is 6 years (unless the excess contribution is in relation to the acquisition of property for less than its fair market value, in which case the statute of limitations will remain indefinite unless Form 5329 has been filed).**

W. **Expansion of the Employer Plans Compliance Resolution System, EPCRS, to Address IRA Related Issues**

a. **Section 305 of SECUIIB Act. 2.0** could have sneakily important long-term ramifications for many IRA owners.

b. To date, the Employer Plans Compliance Resolutions System (EPCRS) has primarily been used to address issues with employer plans.

c Going forward, however; **SECURE Act 2.0 instructs the IRS to; within 2 years of enactment, issue new guidelines to expand "the use of EPCRS to IRA mistakes as well.**

d. While the ultimate list of IRA mistakes that are eligible to be fixed in this manner is likely to be far broader,

e. **Section 305 specifically requires the IRS to consider how EPCRS could be used to provide waivers of the penalty for an RMD shortfall (where appropriate), as well as how distributions from an inherited IRA to non-spouse beneficiaries attributable to an inadvertent error by a service provider can be replaced into the IRA.**

f. The bill will also **expand the use of EPCRS** for more employer plan issues as well.

***Tax Professional's Alert:* - *Confirmation/Clarification that IRA Prohibited Transactions Only Disqualify the Involved Account.***

**Section 322 of SECURE Act 2.0** provides confirmation and or clarification that, beginning in 2023, when a Prohibited Transaction occurs with an IRA account, which generally results in being deemed a full distribution from the IRA and a loss of its tax-favored status, **only that account is deemed distributed.**

**This procedure has always been enforced.**

## X. Annuity - Related Changes

**SECURE Act 2.0** has been heavily championed by the insurance industry for a variety of reasons, but mostly due to its various changes and clarifications of rules related to annuities and, in particular, those annuities held within qualified accounts.

To that end, annuity-related changes made by SECURE Act 2.0 include the following:

### I. Qualified Longevity Annuity Contracts (QLACs)

**Effective immediately, Section 202 repeals the 25% of-account-balance limitation for such contracts, and increase the maximum amount that can be used to purchase such products to $200,000 (up from $145,000 in 2022 and what would have been $155,000 for 2023).**

In addition, retroactive to the establishment of **QLACs in 2014, such contracts are allowed to offer up to a 90-day free-look period and may continue to make joint lifetime payments to divorced couples who elected such payout options previously, while they were married.**

2. **Income Annuities Held Within Qualified Accounts**

   **Effective immediately, income annuities held within qualified plans and IRAs are able to offer additional benefits without violating some very strange actuarial rules in IRS Regulations related to RMDs.**

   More specifically, **Section 201 of SECURE Act 2.0 provides that the following benefits/contract options-will not cause an annuity to be in violation of the RMD rules:**

   Guaranteed increases of income payments of a flat percentage annually, not to exceed 5%;

   Lump sum payments., such as a commutation of the actuarial fair market value (e.g. taking a lump sum in lieu of future payments), that result in the shortening of the payment period;

   Accelerations of payments that would otherwise be payable within the next 12 months.

   Dividend-like payments to annuity owners; and

   Offering Return-of-Premium (ROP) death benefits.

3. **Expansion of Eligible Investments for Variable Annuities and Variable Universal Life Policies**

   **Section 203 of SECURE Act 2.0** instructs the IRS to amend its Regulations such that, effective **7 years after enactment, variable annuities and Variable Universal Life (VUL) policies are eligible to include "Insurance Dedicated ETFs" in their investment lineup.**

   **In effect, such investments will be to ETFs what existing subaccounts today are to mutual funds.**

**Y. Plan-Related Enhancements; Credits, and Other Changes**

**SECURE Act 2.0 is *absolutely packed* with additional plan-related changes.**

Some changes will primarily impact only plan administrators.

Others are changes that could have relevance for small business owners seeking to establish, update, or change an existing plan.

While still others will be relevant to the end clients who participate in such plans.

**Key plan-related changes include (but are not limited to) the following:**

1. **Effective for plan years beginning in 2024, employers will be able to amend their plans to allow employer matches for amounts paid by participants towards their student debt.** Vesting and matching schedules must be the same as if the loan payments had been salary deferrals. Expect to see a *lot* of employers adopting this provision into their plan in an effort to attract and retain young talent.

2. **Beginning in 2025, many new 401(k) and 403(b) plans will be required to include auto-enrollment.** The list of exempt employers, however, is long and includes employers less than 3 years old, church plans, governmental plans, SIMPLE plans, and employers with 10 or fewer employees.

3. **Effective 2023, for employers with 50 or fewer employees, the retirement plan start-up credit will now be allowed for up to 100% of plan start-up costs (subject to existing overall limits), up from the previous limit of 50%. In addition, such employers will be eligible for an additional credit attributable to employer contributions to DC plans made during the first 4 years.**

4. ***Retroactive to 2020*, employers without an existing plan who join(ed) an existing Multiple Employer Plan (MEP) are eligible for the retirement plan start-up credit.**

**5. Effective 2023, employers who offer non-highly-compensated military spouses special plan benefits (e.g., participation within 2 months of hiring or immediate vesting of employer contributions) are eligible for an additional credit of up to $500 for each military spouse, for up to 3 years per spouse.**

**6. Effective 2024, employers with SIMPLE plans will be able to make additional, nonelective contributions to the plans of up to the lesser of 10% of employee compensation, or $5,000.**

**7. Effective 2024, the SIMPLE IRA contribution limits for some Simple IRAs will increase.**

**More specifically, for employers with 50 or fewer employees, the deferral and catch-up contributions will be increased by 10%.**

**Employers with between 51 and 100 employees can give employees the same enhanced deferral limits if they increase their matching contributions to 4%, or their nonelective contributions to 3% (normally 3% and 2%, respectively).**

**8. Effective next year (2024), taxpayers can create a SEP IRA plan for household employees. So, you know, if a client is struggling to land that nanny or cleaning person they really want away from the 'other guy', they can now offer their own retirement plan for them.**

**9. Beginning in 2024, a new type of employer-sponsored retirement plan known as a "Starter 401(k)" plan will be available. Such plans will require auto-enrollment (unless the employee opts out), allow for only employee deferrals (with no employer match), and limit deferrals to no more than the IRA contribution limit at the time.**

**10 The original SECURE Act created a dual-eligibility track for employees to be mandatory participants in a 401(k) plan. Previously, employees had to work at least "*1,000 hours in a single year to qualify*. But effective for plan years beginning in 2024 or later, the original SECURE Act says that individuals with 3 or more consecutive years of 500+ hours of service**

**(since 2021) are also mandatory participants. SECURE Act 2.0 takes that 3-year requirement and shortens it to 'just' 2 years, effective in plan years starting in 2025 or later (which would appear to mean that the 3-year requirement is still in effect for plan years starting in 2024, while the 2-year requirement would kick in the following year in 2025).**

**11.Effective in 2023, employers and plan providers will be able to entice employees to participate in plans by offering "de minimis financial incentives."**

***Tax Professional's Alert:*** ***No guidance, but think "sign up or increase your 401(k) plan deferral percentage today, and your next Starbucks coffee is on us!" No this is not $100, it has to be too small to measure, "de minimis.".***

12: **Effective in 2023, the One Bad Apple Rule for 403(b) multiple-employer plans is repealed.**

13. **Effective immediately 403(b) plans may include Collective Investment Trusts (CITs) in their investment line-up.**

## Z. Other Important, Miscellane0us Provisions of the Act

Incredibly, even after all of the provisions covered, there are still a substantial number of provisions contained in SECURE Act 2.0.

While not completely exhaustive, the list of provisions in the Act of which tax professionals should be aware includes the following:

a. **Effective in 2027,** ***the "Saver's Credit"*** will be replaced by the ***"Saver's Match."*** **The Saver's Match will equal up to 50% of the first $2,000 contributed by an individual to a retirement account each year (so a maximum of $1,000) and must go to a traditional account. Many of the limitations of the Saver's Credit, such as phaseouts at at relatively modest income levels, and an inability for full-time students and/or dependents to qualify, are carried over to the Saver's Match. Accordingly, a relatively small percentage of most advisors' clients will qualify for the benefit.**

b. **Effective in 2028, certain S corporation_owners who sell their shares to an Employee Stock**

Ownership Program (ESOP) will be eligible to defer up to 10% of their gain, if timely reinvested in Qualified Replacement Property. Currently, such deferral (of up to 100% of gain) is only available to certain C corporation owners.

c. Effective for 2024. participants in governmental 457(b) plans will be able to update their deferral-percentage at any time (rather than only on the first of the month).

d. Effective immediately, public safety officers will be able to exclude up to $3,000 of their government-paid retirement plan benefits from income if they are used to pay for health insurance.

e. Effective immediately, in the event that an individual requires a hardship distribution from their plan, the plan may rely on the employee's self-certification of such need.

f. SECURE Act 2.0 clarities that Applicable Multi-Beneficiary Trusts (trusts created by the original SECURE Act for individuals with special needs or who are chronically ill) can have charities as remainder beneficiaries without blowing up the stretch treatment for the beneficiary with special needs/chronic illness.

**End of Alphabet, but one more! – Defined Benefit Cash Balance Plan**

***Do not overlook one sentence in this massive budget Act*** that has the potential to have profound and important impact on retirement programs sponsored by U.S. employers.

This one sentence, found in **Section 348, Title III, Simplification and Clarification of Retirement Plan Rules**, opens the door for a modern variation of a kind of defined benefit plan that has existed and thrived since the 1980's – the cash balance plan. Section 348 is simply titled **CASH BALANCE.**

**This sentence is added to the end of Section 411(b) of the Coode and corresponding provision of ERISA and serves to clarify how the so-called anti-backloading rules apply to a cash balance plan that provides interest credits using a variable basis (i.e., anything other than a fixed rate such as 5%). The language states that in**

**running one of the anti-backloading tests, a reasonable rate, not to exceed 6% should be used.**

This is a big deal because Treasury and IRS have been applying a different rule until SECURE 2.0. **That rule required that the tests be performed assuming the current rate should be assumed to continue in future years in projecting an employee's benefit at normal retirement age. That interpretation of the law has led to illogical and unworkable outcomes in many situations, confusing many employers who otherwise might adopt or maintain a cash balance plan not to do so.**

The replacement of the regulators' interpretation with this one sentence **eliminates a plan design impediment thereby opening the door to cash balance designs that provide more employer cost stability and predictability and better employee outcomes.**

In particular, cash balance plans that credit interest using actual rates of return on specified investment explicitly permitted by the Pension Protection Act of 2006, have become a much more viable option for sponsors of the many existing cash balance plans that did not make such a change because doing so would have required them to sharply reduce the incentives for longer service or older employees baked into their cash balance.

***<u>Tax Professional's Alert</u>:* Employers that sponsor cash balance plans with ongoing or even frozen benefit credits should examine how this one sentence could present a new and better path to providing secure lifetime retirement income in a way that will help their employee recruitment and retention in a way that is more cost efficient and financially viable for their companies.**

## Summary

If the chief concern is making certain that most Americans save sufficiently to allow them to enjoy a reasonable standard of living in retirement, then you might be disappointed by the provisions of SECURE Act 2.0.

**SECURE Act 2.0** does not tackle why people do not have enough saved.

One of the largest reasons behind the ongoing American retirement crisis is that there is not universal coverage by personal retirement savings plans. Workers can go long stretches without having access to a retirement savings plan, as many employers choose not to offer them or unemployment puts them out of reach entirely.

A recent report from the Bureau of Labor Statistics found that the typical person born between 1957 and 1964 held more than 12 jobs between the ages of 18 and 52, with half of those positions occurring before the age of 25. Moving in and out of jobs with this frequency leads to gaps in employer-sponsored retirement plans.

The "flawed system" has led the typical older worker earning less than $40,000 a per to have nothing saved for retirement.

Older workers earning between $40,000 and $115,000 per year have a medium $60,000 in savings. Meanwhile, workers earning over $115,000 have median savings of $200,000.

Up to 40% of middle-income workers are at risk of moving into poverty in retirement.

Between 2019 and 2045, the number of people over 62 who are in or near poverty will increase 22.3%, from 18 million to 21.3 million.

Four key policy changes were inspired by the recent introduction of the Retirement Savings for Americans Act. Proposed in early December, 2022 by Sens. John Hickenlooper, D – CO, Thom Tillis, R – NC and Representatives Terri Sewell, D – AL and Lloyd Smucker, R – PA.

Create a universal retirement plan,

Make tax expenditures more equitable,

Protect retirement savings, and

Strengthen and expand Social Security.

**SECURE and SECURE 2.0, will SECURE 3.0 be in the future?**

Abbreviations – Meaning

| | |
|---|---|
| ACP | Average Contribution Percentage |
| ADP | Actual Deferral Percentage |
| ASC | Attribution of Stock Group |
| CG | Community Group |
| CIT | Collective Investment Trust |
| DOE | Date of Enactment |
| DOL | Department of Labor |
| EACAs | Eligible Automatic Contribution Arrangement |
| EE | Employee |
| ESOP | Employers Stock Option Plan |
| EFTs | Exchange Traded Funds |
| EPCRS | Employee Plan Corporate Resolution System |
| ESA | Employee Savings Account |
| GOPs | Group of Plans |
| LTPT | Long-term Part-time |
| MEP | Multi-Employer Plan |
| NHCEs | Non-Highly Compensated Employees |
| PBGC | Pension Benefit Guarantee Corporation |
| PEP | Pooled Employee Plan |
| PYB | Plan Years Begin |
| RBD | Required Beginning Date |
| QACA | Qualified Automatic Contribution Arrangement |
| QBAD | Qualified Birth or Adoption Distribution |
| QCD | Qualified Charitable Deduction |
| QDIA | Qualified Default Investment Alternative |
| QLAC | Qualifying Longevity Contracts |
| RMD | Required Minimum Distribution |
| SPD | Summary Plan Description |
| VFCP | Voluntary Fiduciary Correction Program |

Retirement Definitions

| | |
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| 401(k) | A 401(k) is **an employer-sponsored retirement savings plan that offers significant tax benefits while helping you plan for the future**. With a 401(k), an employee sets a percentage of their income to be automatically taken out of each paycheck and invested in their account. |
| 403(b) | A 403(b) plan, also known as a tax-sheltered annuity plan, is **a retirement plan for certain employees of public schools, employees of certain Code Section 501(c)(3) tax-exempt organizations and certain ministers**. A 403(b) plan allows employees to contribute some of their salary to the plan. |
| 457(b) | Plans of deferred compensation described in IRC section 457 are available for certain state and local governments and non-governmental entities tax exempt under IRC Section 501. They can be either eligible plans under IRC 457(b) or ineligible plans under IRC 457(f). Plans eligible under 457(b) allow employees of sponsoring organizations to defer income taxation on retirement savings into future years. Ineligible plans may trigger different tax treatment under IRC 457(f). |
| 529 Plan | A 529 plan is an investment account that offers tax benefits when used to pay for qualified education expenses for a designated beneficiary. |
| ABLE Accounts | An Achieving a Better Life Experience (ABLE) account is **a tax-advantaged savings account to which contributions can be made to meet the qualified disability expenses of the owner, or designated beneficiary**. |
| Defined Benefit Plan | Defined benefit plans **provide a fixed, pre-established benefit for employees at retirement.** Employees often value the fixed benefit provided by this type of plan. On the employer side, businesses can generally contribute (and therefore deduct) more each year than in defined contribution plans. |
| Defined Contribution Plans | Defined Contribution Plan is **a retirement plan in which the employee and/or the employer contribute to the employee's individual account** |

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| | **under the plan**. The amount in the account at distribution includes the contributions and investment gains or losses, minus any investment and administrative fees. |
| IRA | An individual retirement account (IRA) **allows you to save money for retirement in a tax-advantaged way**. |
| Roth IRA | A Roth IRA is **an Individual Retirement Account to which you contribute after-tax dollars**. While there are no current-year tax benefits, your contributions and earnings can grow tax-free, and you can withdraw them tax-free and penalty free after age 59½ and once the account has been open for five years. |
| SEP | A Simplified Employee Pension (SEP) plan **provides business owners with a simplified method to contribute toward their employees' retirement as well as their own retirement savings**. Contributions are made to an Individual Retirement Account or Annuity (IRA) set up for each plan participant (a SEP-IRA). |
| SIMPLE IRA | A SIMPLE IRA allows you to offer a salary deferral plan without the cost or administrative responsibilities associated with traditional 401(k) plans. |

# SECURE 2.0 Provisions

**Pre – 2022 Provisions**

| General Effective Date | Provision and SECURE Section | Description | Optional or Mandatory O/M |
|---|---|---|---|
| 2020 | SECURE Act Technical Corrections 501 | Amends SECURE section 103 (adds notice requirement to 401(m) for a QACA with matching contributions);<br>SECURE section 112 (can exclude LTPT from ACP test and this adds SH and QACA); in LTPT changes "arrangement" to "plan" (no effect); in LTPT minor correction to EE going to full-time);<br>SECURE 116 (modifies 4973(b) excise tax to exclude from tax nondeductible difficulty of care payments);<br>Clerical amendments fix QBADs and incorrect reference for 403(b), adjust references for requirements for plans that put safe harbor in other plan. | N/A |
| 2020 TYB | Tax Credit: Small Employer Pension Plan Start-up Credit for Adopting MEP 111 | Clarifies that the start-up credit is available if an employer is adopting its first plan by joining an existing MEP. | O |
| 2021 | Natural Disasters<br>331 | Provides permanent rules relating to the use of retirement funds in the case of qualified disaster. Distributions are limited to $22,000 per disaster (rather than the usual $100K). May be repaid in 3-year period after distributions. Income inclusion spread over 3 years.<br>Additionally, amounts distributed prior to the disaster to purchase a home would be permitted to be recontributed, and an employer would be permitted to provide for a larger amount be borrowed from a plan by affected individuals and for additional time for repayment of plan loans owed by affected individuals. | O |

| Provisions Starting in 2022 | | | |
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| 2022 | Unclaimed Savers Bond<br><br>122 | Amend USC Title 31 to require Treasury to share certain information relating to the registered owners of matured and unredeemed savings bonds with the States to enable the States to locate the owners in accordance with the States' standards for recovery of abandoned property. | N/A |
| 2022 | 403(b): Allowed to Invest in CITs<br><br>128 | Allows employers with 403(b) plans, including public schools and tax- exempt organizations, to structure their retirement plans as collective investment trusts.<br>**NOTE:** the proposal is applicable to amounts invested after enactment-but practically not (yet) available under legislation to address securities law. | 0 |
| 2022 | RMDs: Qualifying Longevity Annuity Contracts (QLACs) Modifications<br><br>202 | Allows individuals to buy QLACs to satisfy all of their RMD requirement up to $200,000 (indexed after 2024). The current cap applicable to QLACs is the lesser of 25% of the account balance or $125,000. Clarifies that survivor benefits may be paid in the case of divorce and permits up to 90-day free look period. Good faith reliance prior to regulations | 0 |
| 2022 | RMDs: Modification in Calculation for Partial Annuitization<br><br>204 | If a tax-preferred retirement account also holds an annuity, present law requires that the account be bifurcated between the portion of the account holding the annuity and the rest of the account for purposes of applying the RMD rules. This treatment may result in higher minimum distributions than would have been required if the account did not hold an annuity. The provision would permit the account owner to elect to aggregate distributions from both portions of the account for purposes of determining minimum distributions. Good faith reliance until regulations issued. | O |
| 2022 | EPCRS: Recovery of Retirement Plan Overpayment<br><br>301 | Restricts plan sponsors from recovering certain excess payments from a participant after a three-year period when the individual did not cause the overpayment. | M |
| 2022 | EPCRS: Expansion<br><br>305 | Expands EPCRS to allow self-correction of inadvertent significant plan errors without deadline (as long as before examination and within a reasonable period after discovery). Self-corrected loans treated as meeting requirements of VFCP. DOL may impose reporting. Waiver of 60-day rollover for reasons beyond control of account owner.<br>It would also allow the IRS to waive the excise tax for required minimum distributions when an IRA owner self-corrects the error within 180 days. | N/A |
| 2022 | Public Safety/ Military: Firefighter Distributions 308 | Expands the age-50 exception for qualified public safety employees to apply to distributions from a qualified retirement plan or section 403(b) plan to an employee who provides firefighting services. | O |
| 2022 | Distributions: Repayment of QBAD Limited to 3 years 311 | Limits recontribution of QBAD distribution to the three-year period beginning on the day after the distribution date. For QBAD already made, deadline is 12-31-2025 | M |

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| 2022 | IRAs: Tax Penalties Statute of Limitations Clarification 313 | Starts the statute of limitations on assessments on IRA penalties when the taxpayer files his or her individual tax return. | N/A |
| 2022 | Distributions: Terminally Ill Exemption 326 | Provides an exception to the 10% early distribution tax for distribution to a terminally ill individual. Must provide evidence required by plan administrator. May be repaid. | O |
| 2022 | Public Safety/ Military: PS Officers with 25 years of Service Eligible for 10% Penalty Exemption 329 | Extend the exception from 10% penalty to public safety officers with at least 25 years of service with the employer sponsoring the plan (current exemption is age 50 regardless of service). | M |
| 2022 | Public Safety/ Military: Corrections Officers Eligible for 10% Penalty Exemption 330 | Extends the public safety officer exception to the 10% early distribution tax to corrections officers who are employees of state and local governments. Effective after date of enactment. | M |
| 2022 | IRAs: Elimination of Penalty 333 | Exempts excess contributions to IRA (and earnings) that are timely returned from the 10% tax on early distributions. | N/A |
| 2022 | DB: Mortality Tables 335 | Generally requires that for purposes of the minimum funding rules, a pension plan is not required to assume mortality improvements at any age greater than 0.78%. Effective after date of enactment. | M |
| 2022 | Group of Plans (GoPs) 345 | Any 103(a)(3)(C) audit applies only to large plans. | N/A |
| 2022 | Optional Treatment of ER Contributions as Roth contributions 604 | 401(a) plan, 403(b) plan, or a governmental 457(b) plan may permit an employee to designate matching or nonelective contributions as designated Roth contributions. | O |
| 2022 | DB: 401(h) Accounts 606 | Extends the sunset for using assets from an overfunded pension plan to pay retiree health and life insurance benefits. The sunset would be 2025 and this extends it to 2032; and it permits transfers to pay retiree health and life insurance benefits provided the transfer is no more than 1.75% of plan assets and the plan is at least 110% funded. Effective after date of enactment. | N/A |
| | **Provisions Starting in 2023** | | |
| 2023 | RMDs: New Required Beginning Dates 107 | The required beginning date for required minimum distributions (RMDs) is age 73 beginning in 2023, and age 75 beginning in 2033. Hard cut-off; based on birthday (age 72 before 2023 = age 72; turn age 73 before 2033 = age 73; age 74 after 2032 = age 75). | M |
| 2023 | RMDs: Remove RMD Requirements for Certain Life Annuities 201 | Allows individuals to satisfy the required minimum distribution (RMD) requirements by purchasing a fixed annuity with a circumscribed set of features, such as increasing no more than 5% per year or providing for a death benefit equal to the amounts paid for the annuity minus prior payments. | O |

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| 2023 | RMDs: Reduction in Retirement Plan Excise Taxes 302 | Reduces the excise tax for failure to take a required minimum distribution (RMD) to 25% from 50%, and further reduces the excise tax to 10% for taxpayers who take the required RMD before an IRS audit or (if earlier) the second year after the year in which the excise tax is imposed. | O |
| 2023 PYB | PEP: Pooled Employer Plans (PEP) Modification 105 | Permits PEP to designate a named fiduciary (other than an employer in the plan) to be responsible for collecting contributions. Other fiduciary required to implement written contribution collection procedures that are reasonable, diligent, and systematic. Prior to change, duty to collect and hold assets had to be a trustee approved under 408(a)(2). | O |
| 2023 PYB | 403(b): MEPs 106 | 403(b) plans, other than church plans, may form MEPs. No inference for church plans. Provides unified plan relief if MEP satisfies requirements similar to 413(e) (the PEP rules). Governmental plan gets relief even if commonality requirements are not met. Treasury in consultation with DOL must provide education and outreach on fiduciary duties.. | O |
| 2023 PYB | 401(k)s: Small Immediate Financial Incentives for Contributing to a Retirement Plan 113 | Allows de minimis financial incentives in 401(k)s and 403(b)s for employees "who elect to have [deferrals made]." Cannot be paid for by the plan. De minimus not defined. | O |
| 2023 PYB | Distributions: EE Certification of Deemed Hardship Conditions<br><br>312 | In determining whether a distribution is due to an employee hardship, plan administrator of a 401(k), 403(b), or 457(b) plan may rely on the employee's certification that the distribution is on account of an eligible hardship/emergency, not in excess of amount needed, and no alternative means to satisfy need. Treasury may restrict in regs for actual knowledge. | O |
| 2023 PYB | 401(k): Retroactive First-year Elective Deferrals for Sole Proprietors<br><br>317 | Sole owner of an unincorporated trade or business, who is the only employee of such trade or business, may treat any elective deferral to a 401(k) plan made before the tax return due date (determined without regard to any extensions) as having been made before the end of the plan's first plan year. Applies only to the first plan year in which the section 401(k) plan is established. | O |
| 2023 PYB | R&D: Eliminate Plan Requirements for Unre-enrolled Participants 320 | Allows plans to provide much more limited information to employees who are not contributing to a plan and that have no balance in the plan. Must have provided an SPD, any required eligibility notices, and an annual notice. | O |
| 2023 PYB | DB: Cash Balance Testing 348 | For 411(b) accrual rule tests, may use a reasonable projection of interest crediting rates; capped at 6%. | O |
| 2023 TYB | Tax Credit: Small Employer Pension Plan Start-up Credit Modification<br><br>102 | Establishes a new credit and expands an existing credit. Startup credit increased to 100% for companies with 50 or fewer employees. The existing cap of $5,000 per employer would be retained. The new credit offsets up to $1,000 of employer contributions per employee in the first year, phased down gradually over 5 years. Applies to companies with 100 or fewer employees, however, it is phased out for those with more than 50 employees. No credit for contributions to any employee making more than $100k (indexed after 2023). NOTE: no deduction for employer contributions qualifying for credit. | N/A |

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| 2023 TYV | Public Safety/ Military: Small Employer Retirement Plan Eligibility Credit for Military Spouses 112 | Tax credit to small employers (using SEP definition of under 100 EEs) who offer NHCE military spouses a retirement plan with enhanced eligibility rules and an accelerated vesting schedule. The credit of up to $500 per military spouse would apply for first 3 years of participation ($200 for eligibility; $300 for ER contributions). | O |
| 2023 TYB | 457(b): Eliminate "First Day of the Month" Requirement for Governmental Plans 306 | Plan may permit participants in 457(b) plans to change their contribution election at any time. | M |
| 2023 TYB | Distributions: Qualified Charitable Distribution Rule Modifications 307 | Indexes the annual $100,000 exclusion limit after 2022. Allows a one-time $50,000 distribution from an IRA to a split-interest entity. | N/A |
| 2023 TYB | IRAs: Limiting Cessation of IRA Treatment to Portion of Account Involved in a PT 322 | The provision modifies the disqualification rule that applies when an IRA owner or beneficiary engages in a prohibited transaction so that only the IRA that is used in the prohibited transaction is treated as distributed to the individual. | N/A |
| 2023 TYB | SIMPLE and SEP: Roth Permitted 601 | Under the provision, a SEP and a SIMPLE IRA are permitted to be designated as Roth IRAs. | O |
| | **Provisions Starting in 2024** | | |
| 2024 | Distributions: Personal Emergency<br>115 | One distribution would be permissible per year of up to $1,000 (or account in excess of $1,000 if less), with the OPTION to repay the distribution within 3 years. No further emergency distribution would be permissible during the 3-year repayment period unless recontribution occurs. Exemption from 10% penalty. May rely on participant certification absent actual knowledge. | O |
| 2024 | Distributions: Auto-Portability<br>120 | Prohibited transaction exemption for service provider providing automatic portability services, such as automatic transfer of a participant's default IRA (established in connection with a distribution from a former employer's plan) into the participant's new employer's retirement plan, unless the participant elects otherwise. | M |
| 2024 | IRAs: Long-term Tuition to Roth<br>126 | Tax and penalty free rollovers from 529 accounts to Roth IRAs, under certain conditions. Beneficiaries of 529 accounts permitted to rollover up to $35,000 (lifetime limit). Subject to Roth IRA annual contribution limits, and the 529 account must have been open for more than 15 years. | M |
| 2024 | Retirement Savings Lost and Found<br>303 | Requires the DOL to establish an online searchable database with information on the location of unclaimed vested benefits of missing, lost, and non-responsive participants and beneficiaries in ERISA plans. Information reporting required for plan years beginning at least 2 years after enactment. | M |
| 2024 | Distributions: Cash-out Limit 304 | Increases limit from $5,000 to $7,000. | O |

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| 2024 | Distributions: Penalty-free Withdrawals for Domestic Abuse Victims 314 | Plans may permit withdrawal in the case of an eligible distribution to a domestic abuse victim. Lesser of $10,000 (indexed) or 50% of balance. Applies to plans not subject to 417. Withdrawal is exempt from 10% penalty. May be recontributed to applicable eligible retirement plans, subject to certain requirements. | O |
| 2024 | Distributions: Substantially Equal Periodic Payments<br><br>323 | Clarification of substantially equal periodic payment rule. The exception from the 10% early distribution tax for substantially equal periodic payments will continue to apply if the case of a rollover of the account, an exchange of an annuity providing the payments, or an annuity that satisfies the required minimum distribution rules. No inference on rules prior to enactment. | N/A |
| 2024 | RMDs: Surviving Spouse Elections<br><br>327 | Surviving spouse election to be treated as employee. Allows a surviving spouse to elect to be treated as the deceased employee for purposes of RMDs. | M |
| 2024 | EPCRS: Safe Harbor for Corrections of Employee Elective Deferral Failures 350 | Allows employers to correct inadvertent auto-enrollment errors within 9½ months after the end of the year in which the error occurs without making up missed deferrals. | O |
| 2024 PYB | Student Loan Matching Program<br><br>110 | Permits employers to match student loan payments under 401(k), 403(b), SIMPLE, and 457(b) plan as if those payments were elective deferrals. May rely on EE certification re: payment amount.<br>I. ER contribution treated as a match.<br>II. Can test ADP separately for those receiving loan match (repayment not treated as deferral). | O |
| 2024 PYB | Starter 401(k)<br><br>121 | Permits an employer that does not sponsor a retirement plan to offer a starter 401(k) plan (or safe harbor 403(b) plan). Requires that all employees be default enrolled in the plan at a 3% to 15% of compensation deferral rate. Could exclude union, non-resident aliens, and age/service excludable. No employer contributions permitted. The limit on annual deferrals is $6,000 with an additional $1,000 in catch-up contributions beginning at age 50. Indexed after 2024. No ADP or top-heavy testing required. Future technical correction: Text doesn't match summary/intent. Summary says limits will match IRA limits, but the text limits deferrals to $6,000 rather than picking up the increased IRA limits for future years. | O |
| 2024 PYB | Emergency Savings Accounts<br><br>127 | Employers may offer NHCEs pension-linked (despite wording, this applies to defined contribution plans) emergency savings accounts and may automatically opt employees into these accounts at no more than 3% of their salary. Accounts are capped at $2,500 (or lower as set by the employer). Contributions are made post-tax and are treated as elective deferrals for purposes of retirement matching contributions. Once the cap is reached, the contributions may be stopped or continue as Roth deferrals.<br><br>First 4 withdrawals may not be subject to fees.<br><br>May subject account to "reasonable restrictions."<br><br>If plan matches deferrals, must count contributions to ESA in same way for purposes of match. May employ reasonable procedures re: match to prevent match from exceeding intended amount. At termination, may take distribution or roll into Roth. | O |

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|---|---|---|---|
| 2024 PYB | Top Heavy: Modification for EEs Who Don't Meet Age and Service Requirements 310 | Employees who do not meet the minimum age and service requirements under the Code may be ignored in determining whether plan satisfies the top-heavy minimum contribution requirement. | O |
| 2024 PYB | Family Attribution Rule Fixes<br><br>315 | Disregards community property rules for ownership under CG and ASG. Spouse not attributed options of a minor child.<br>Disaggregates businesses if the only common ownership link is attribution of parental ownership to a child. A change in CG/ASG status is treated as 410(b)(6)(C) transaction. | N/A |
| 2024 PYB | Plan Amendments: Allow More Time to Add Discretionary Plan Amendments to Increase Benefits<br><br>316 | May amend plan to increase benefits accrued under the plan as of any date in the preceding plan year (other than increasing the amount of matching contributions) as long as it would not otherwise cause the plan to fail to meet any of qualification requirements and the amendment is adopted before the time prescribed by law for filing the return of the employer for a taxable year (including extensions) during which the amendment is effective. | O |
| 2024 PYB | SIMPLE: Adopt 401(k) Mid-Year<br><br>332 | Employers allowed to replace simple retirement accounts with safe harbor 401(k) plans during a year. Allows an employer to replace a Simple IRA plan with a simple 401(k) plan or other 401(k) plan that requires mandatory employer contributions during a plan year. Limits pro-rated based on days in effect. Rollovers into 401(a) or 403(b) plan not subject to 2-year penalty tax. | O |
| 2024 PYB | DB: Annual Funding Notices 343 | Change to content requirements. | 2M, AFN Required |
| 2024 PYB | DB: Variable Rate<br><br>Premium 349 | No indexing of variable rate premium after 2023; flat $52. | N/A |
| 2024 PYB | 403(b): Hardship Rules for 403(b) Plans<br><br>602 | Conforms the hardship distribution rules for section 403(b) plans to those of section 401(k) plans. In addition to elective deferrals, may distribute, on account of an employee's hardship, qualified nonelective contributions, qualified matching contributions, and earnings on any of these contributions (including on elective deferrals). | O |
| 2024 TYB | IRAs: Indexing IRA Catch-up Limit<br><br>108 | Catch-up contribution limit to IRAs for those aged 50 and over (currently $1,000) would be indexed to inflation after 2023 (base is 2022; intervals of $100). | N/A |
| 2024 TYB | SIMPLE: Additional Employer Contributions<br><br>116 | SIMPLE plans require employer contributions of either 2% of compensation or 3% of employee elective deferral contributions. This provision would permit an employer to make additional contributions up to the lesser of 10% of compensation (limited by 401(a)(17)) or $5,000 (indexed after 2024). | O |

| | | | |
|---|---|---|---|
| 2024 TYB | SIMPLE: Increase Limits<br><br>117 | This provision increases the annual deferral limits to 110% of the 2024 limit on deferrals (indexed after 2024) in the case of an employer with no more than 25 employees. An employer with 26 to 100 employees would be permitted to provide these higher deferral limits, but only if the employer either provides a 4% matching contribution or a 3% employer contribution. Employer cannot have had plan within 3 years. Effective after 2023. Treasury must provide report on SIMPLE Plans. | O |
| 2024 TYB | RMDs: Roth Accounts<br><br>325 | Roth RMD parity with IRAs. No pre-death RMDs from Roth accounts in qualified plans (which is currently the rule only for Roth IRAs). | M |
| 2024 TYB | Catch-up Contributions: Required to Be Roth<br><br>603 | Catch-ups under a 401(k), 403(b) plan, or governmental 457(b) plan must be designated Roth contributions for Ps with > $145k (indexed) in wages in prior year (and <= $145k must have Roth option for catch ups). Treasury may issue regulations re: changing election if comp<br>is determined to exceed threshold after election is made. Silent on recharacterization. | M |
| | Provisions Starting in 2025 | | |
| 2025, | Distributions: LTC Premiums<br><br>334 | Permits DC plans to distribute up to $2,500 (indexed) per year for the payment of premiums for certain specified long-term care insurance. Distributions from plans and IRAs to pay such premiums would be exempt from the additional 10% tax on early distributions. Participant must file premium statement with plan; insurer with Treasury. Treasury must maintain website of certified LTC providers. | O |
| 2025 Dec. 31 | Plan Amendments to Conform with SECURE 2.0<br><br>501 | This provision allows plan amendments made pursuant to this bill to be made by the end of 2025 (2027 in the case of governmental plans) as long as the plan operates in accordance with such amendments as of the effective date of a bill requirement or amendment. Also extends SECURE 1.0 and CARES. | N/A |
| 2025 PYB101 | Automatic Enrollment: Required<br><br>101 | All new 401(k) and 403(b) plans adopted after 12/29/22 except businesses with fewer than 10 employees, new businesses less than 3 years old, and churches and governments -- must (beginning 1/1/25) automatically enroll participants at 3%-10% and increase the rate by one percent per year to at least 10%, but no more than 15%. Employees would have at least 90 days to opt out and take a distribution of any automatic deferrals. Must have Eligible Automatic Contribution Arrangements (EACAs) withdrawal provision. Does not apply to SIMPLE plans (they're IRAs), but does apply to adoption of a MEP after enactment date (based on employers adoption, not effective date of MEP). | M, unless excluded |
| 2025 PYB | Long-Term Part-Time (LTPT) Worker Definition Modification<br><br>125 | Requires part-time workers who work for at least 500 hours per year for two years to be eligible to make employee contributions to an employer's defined contribution retirement plan. Adds provision to ERISA, covering 403(b) plans. Such provision ignores service for vesting and eligibility prior to 2023. Changes 401(k) provision, to exclude vesting service prior to 2021. Effective 2025PY, but vesting change and top heavy exemption fix effective as if included in the enactment of section 112 of SECURE Act. | M |

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|---|---|---|---|
| 2025 PYB | Catch-up Contributions: Limit Increase at Certain Ages 109 | Raises catch-up contributions to greater of $10,000 or 150% of regular catchup limit in 2024 for years in which the participant would attain age 60 through 63 ($5,000 or 150% of 2025 limit for SIMPLE plans).<br>Indexed after 2025. | O |
| | **Provisions Starting in 2026 and later** | | |
| 2026 PYB | R&D: Paper Statement Mandate<br><br>338 | Requires at least one quarterly benefit statement to be delivered on paper unless the participant opts-out of the paper requirement. The paper disclosure requirement is once every 3 years for defined benefit plans. No paper required for wired-at-work or those who opt out of paper. | M |
| 2027 TYB | Saver's Match: Enhancement of Saver's Credit<br><br>103 | Refundable Saver's Match. The credit would be a match of 50% of up to $2,000 in IRA or retirement plan contributions (less distributions to participant (or spouse if married, filing jointly) in past 3 years + period before return is file) - irrespective of tax liability. The match is phased out between $41,000 and $71,000 in the case of joint returns ($20,500 to $35,500 for single and married filing separate; $30,750 to $53,250 for head of household). Thresholds are indexed after 2027. Must go into retirement vehicle unless match is <$100. Contribution/match treated as elective deferral (but doesn't count toward limits). Subject to distribution restrictions applicable to deferrals except can't withdraw for hardship.<br><br>Detailed rules on recapture of early distributions (within prior 2 years). Separate accounting in plan because not included in top-heavy and special distribution rules. | O |
| 2027 TYB | Public Safety/ Military: First Responder Retirement Plan Disability Payment Exclusion 309 | Disability payments to first responders from retirement plans would be excluded from income after reaching retirement age. | N/A |
| 2028 | Employee Ownership: Deferral of Tax for Certain Sales of Employer Stock to Employee Stock Ownership Plan Sponsored by S Corporation 114 | Deferral of tax for certain sales of employer stock to ESOPs. Permits the owner of employer stock issued by an S corporation to defer 10% of long-term capital gain from the sale of that stock to an ESOP. | N/A |
| 2028 PYB | Employee Ownership: Certain Securities Treated as Publicly Traded in Case of Employee Stock Ownership Plans 123 | Allows certain non-exchange traded securities to qualify as "publicly traded employer securities," making it easier for them to offer ESOPs. | N/A |

**Additional provisions for the Department of Labor (DOL).**



## Additional Resources

Dear Client:

On December 29, 2022, President Joe Biden signed into law The Consolidated Appropriations Act, 2023 which included the SECURE 2.0 which has wide impact on retirement provisions for taxpayers. Our firm takes pride in keeping our taxpayers informed in order that they understand tax law changes and how they can benefit from them. There are over 40 changes to retirement in the over 4,000 pages of this tax act. The retirement provisions for your consideration follow.

**Provisions Benefiting Individuals**

**Tax-free rollovers from 529 accounts to Roth IRAs**. After 2023, the Act permits beneficiaries of 529 college savings accounts to make up to $35,000 of direct trustee-to-trustee rollovers from a 529 account to their Roth IRA without tax or penalty. The 529 account must have been open for more than 15 years, and the rollover is limited to the amount contributed to the 529 account and its earnings more than five years earlier. Rollovers are subject to the Roth IRA annual contribution limits, however they are not limited based on the taxpayer's AGI.

**Age increased for required distributions**. Under the Act, the age used to determine required distribution beginning dates for IRA owners, retired employer plan members, and active-employee 5%-owners increases, in two stages, from the current age of 72 to age 73 for those who turn age 72 after 2022, and to age 75 for those who attain age 74 in 2032.

**Larger catch-up contributions permitted**. Starting in 2025, the Act increases the current elective deferral catch-up contribution limit for older employees from $7,500 for 2023, $3,500 for SIMPLE plans, to the greater of $10,000, $5,000 for SIMPLE plans, or 50% more than the regular catch-up amount in 2024, 2025 for SIMPLE plans, for individuals who attain ages 60-63. The dollar amounts are inflation-indexed after 2025.

**More penalty-free withdrawals permitted.** The Act adds an exception after 2023 to the 10% pre age-59½ penalty tax for one distribution per year of up to $1,000 used for emergency expenses to meet unforeseeable or immediate financial needs relating to personal or family emergencies. The taxpayer has the option to repay the distribution within three years. No other emergency distributions are permissible during the three-year period unless repayment occurs.

Similarly, plans may permit participants that self-certify having experienced domestic abuse to withdraw the lesser of $10,000, indexed for inflation, or 50% of their account free from the 10% tax on early distributions. The participant has the opportunity to repay the withdrawn money from the retirement plan over three years and get a refund of income taxes on money that is repaid. Also, the additional 10% early distribution tax no longer applies to distributions to terminally ill individuals.

Beginning December 29, 2025, retirement plans may make penalty-free distributions of up to $2,500 per year for payment of premiums for high quality coverage under certain long term care insurance contracts.

Also, retroactive for disasters after January 25, 2021, penalty free distributions of up to $22,000 may be made from employer retirement plans or IRAs for affected individuals. Regular tax on the distributions is taken into account as gross income over three years. Distributions can be repaid to a tax preferred retirement account. Additionally, amounts distributed prior to the disaster to purchase a home can be recontributed, and an employer may provide for a larger amount to be borrowed from a plan by affected individuals and for additional time for repayment of plan loans owed by affected individuals.

The Act also contains an emergency savings provision that allows employers to offer non-highly compensated employees emergency savings accounts linked to individual account plans that automatically opt employees into these accounts at no more than 3% of their salary, capped at a maximum of $2,500. Employees can withdraw up to $1,000 once per year for personal or family emergencies without certain tax consequences.

**Reduced penalty tax on failure to take RMDs.** For tax years beginning after December 29, 2022, the Act reduces the penalty for failure to take required minimum distributions from qualified retirement plans, including IRAs, or deferred compensation plans under Code Sec. 457(b) from the current 50% to 25% of the amount by which the distribution falls short of the required amount. It reduces the penalty to 10% if the failure to take the RMD is corrected in a timely manner.

**Favorable surviving spouse election.** For plan years after 2023, the surviving sole spousal designated beneficiary of an employee who dies before RMDs have begun under an employer qualified retirement plan may elect to be treated as if the surviving spouse were the employee for purposes of the required minimum distribution rules. If the election is made distributions need not begin until the employee would have had to start them.

This provision allows a designated spousal beneficiary to receive a similar distribution period for lifetime distributions under an employer plan as is permitted if the surviving spouse rolled the amount into an IRA.

IRS will prescribe the time and manner of the election, which once made may not be revoked without IRS' consent.

**Employer match for student loan payments.** To assist employees who may not be able to save for retirement because they are overwhelmed with student debt, and are missing out on available matching contributions for retirement plans, SECURE allows them to receive matching contributions by reason of their student loan repayments. For plan years after 2023, it allows employers to make matching contributions under a 401(k) plan, 403(b) plan, or SIMPLE IRA for "qualified student loan payments."

**ABLE Program Inclusion.** States may establish tax-exempt ABLE programs to assist persons with disabilities. Under current law, an individual must become disabled or blind before age 26 to be eligible to establish an ABLE account. The Act raises the age threshold from 26 to 46. The change is effective for tax years beginning after 2025.

**Tax-exempt disability retirement payouts for first responders**. The Act allows law enforcement officers, fire fighters, paramedics, and emergency medical technicians to exclude from gross income certain service-related disability pension or annuity payments (from a 401(a), 403(a), governmental 457(b), or 403(b) plan) after they reach retirement age. The exclusion applies to amounts received for post-2026 tax years.

**Telehealth exemption for HDHPs**. To facilitate the use of telehealth during the COVID pandemic, the CARES Act provided that coverage for telehealth and other remote care services would be disregarded coverage, which could be provided before a High Deductible Health Plan minimum deductible was satisfied without causing a loss of Health Savings Account eligibility for plan years beginning before 2022. The Act amends the IRC to provide that the exception for telehealth and other remote care services applies to plan years beginning after 2022 and before 2025.

**Return of excess contributions.** The Act specifies that earnings attributable to excess IRA contributions that are returned by the taxpayer's tax return due date (including extensions) are exempt from the 10% early withdrawal tax. The taxpayer must not claim a deduction for the distributed excess contribution. This applies to any determination of, or affecting, liability for taxes, interest, or penalties made on or after December 29, 2022.

**Time limit on excess contribution excise tax**. The Act provides that the statute of limitations for the assessment of excise taxes on excess contributions to tax-favored accounts and accumulations on qualified retirement plans begins to run on the filing of the taxpayer's income tax return for the year of the violation and runs for three years (six years in the case of excess contributions). The starting point no longer depends on the plan's filing an excise tax return.

**Small Business Provisions**

**Larger tax credit for start-up retirement plans**. The SECURE Act improves the small employer pension plan start-up cost credit in three ways for tax years starting after 2022.

First, it makes the credit equal to the full amount of creditable plan start-up costs for employers with 50 or fewer employees (up to an annual cap). Previously only 50% of costs were allowed (which still applies to employers with 51 to 100 employees).

The Act also retroactively fixed a technical glitch that prevented employers who joined multi-employer plans in existence for more than three years from claiming the start-up cost credit. Employers that joined a pre-existing multi-employer plan in 2000 or 2001 should contact us about filing amended returns claiming the credit.

Perhaps the largest change is that certain employer contributions for a plan's first five years now may qualify for the credit. The credit is increased by a percentage of employer contributions, up to a per-employee cap of $1,000: It is 100% in the plan's first and second tax years, 75% in the third year, 50% in the fourth, and 25% in the fifth. For employers with between 51 and 100 employees, the contribution portion of the credit is reduced by 2% times the number of employees above 50.

In addition, no employer contribution credit is allowed for contributions for employees who make more than $100,000 (adjusted for inflation after 2023). The credit for employer contributions also is not available for elective deferrals or contributions to a defined benefit pension plan.

**New credit for military spouses.** The Act adds a new tax credit for employers with no more than 100 employees earning at least $5,000 for the preceding year for each military spouse who starts participating in an eligible employer defined contribution plan. Highly compensated employees are excluded from consideration. The annual credit amount for the year the spouse begins participating in the plan and each of the next two tax years is (1) $200 for each plan-participating military spouse, plus (2) up to $300 of related employer plan contributions. This new credit is available for tax years beginning after December 29, 2022.

**Retroactive first-year deferrals for sole proprietors.** To correct the situation where a sole proprietor can't make an elective deferral for the first year to a plan created after the close of the year, the Act provides, for plan years beginning after 2022 for a sole proprietor who is the only employee of an unincorporated trade or business, that any elective deferral made by the proprietor's original tax return due date ending after or with the end of the plan's first plan year, will be treated as made before the end of that first plan year.

**Key Retirement Plan Provisions**

**Automatic salary deferral enrollment.** For plan years beginning after 2024, the Act provides that a plan that permits salary deferrals generally will not be treated as a qualified cash or deferred arrangement or annuity contract unless it includes an automatic contribution arrangement (EACA) that satisfies these requirements:

1. It must allow permissible withdrawals within 90 days after the first elective contribution;

2. Automatic contributions must be 3% to 10% during a participant's first participation year, unless the participant elects out, automatically increasing by one percentage point each year to between 10% and 15% (but no more than 10% for plan years ending before 2025 for any non-"safe harbor" plan; and

3. If the participant makes no investment election, automatically contributed amounts must be invested in accordance with DOL default investment rules.

**Exceptions**: Automatic enrollment is not required for SIMPLE 401(k) plans, plans established before December 29, 2022, governmental or church plans, plans maintained by an employer in existence for less than three years or with fewer than 11 employees.

**New "starter 401(k) plans.** The Act establishes two new kinds of retirement plan designs for plan years beginning after 2023, which smaller employers may be inclined to offer to employees due to their eased costs and administrative burdens:

1. A new type of section 401(k) plan called a starter 401(k) deferral-only arrangement, which is a cash or deferred arrangement maintained by an eligible employer that automatically satisfies the actual deferral percentage (ADP) nondiscrimination test. An employer can generally offer this type of plan only if it maintains no other plan in that year. All employees who meet the plan's age and service requirements must be eligible to participate.

   The contribution percentage must be from 3% to 15%, applied uniformly. Employees may elect out or choose to contribute at a different level. No matching or nonelective contributions are permitted. Employee elective contributions for a calendar year may not exceed $6,000. adjusted for inflation, but catch-up contributions of up to $1,000, inflation indexed, are permitted for employees age 50 or over.

2. A new type of 403(b) plan called a safe harbor deferral-only plan, for which requirements similar to those described for starter 401(k) deferral-only arrangements apply.

**Improved coverage for part-timers**. The Act modifies the rules that apply to long-term part-time employees under a 401(k) or 403(b) plan subject to ERISA to reduce the service requirement for those employees from three years to two consecutive years, for employees who have worked for the employer at least 500 hours per year and have met the minimum age 21 requirement by the end of the two-year period. This change is effective for plan years beginning after 2024.

**More plan self-correction permitted.** The Act expands the use of self-correction under the IRS Employee Plans Compliance Resolution System (EPCRS) in a number of ways. It generally allows qualified plans under Code Sec. 401, Code Sec. 403, as well as SEPs and SIMPLE IRAs under Code Sec. 408 to self-correct certain inadvertent failures (defined expansively, but not including egregious or abusive violations), including participant-loan-related errors, without advance permission, unless the error is identified by IRS before any corrective actions is taken, or the self-correction is not completed within a reasonable time after the failure is identified.

The Act also directs IRS to allow custodians to use EPCRS to address various IRA failures, including failures to make required minimum distributions and attempted rollovers by nonspouse beneficiaries from inherited IRAs. These provisions are effective as of December 29, 2022. and EPCRS must be revised for these changes within two years.

**Eased notice requirements for unenrolled participants**. For plan years after 2022, the Act exempts defined contribution plans from intermittent notification requirements for participants who elect not to participate, and who have already received a summary plan description and any other notices related to initial eligibility. However, unenrolled participants must still receive: an annual reminder notice of their eligibility to participate with any applicable deadlines; and certain other documents they request.

**Extended plan amendment period**. The deadline for plan amendments made under the Act or any related IRS or DOL regulation is the end of the first plan year beginning on or after January 1, 2025 (2027 for governmental and collectively bargained plans). In the interim, a plan that operates as if a retroactive amendment were already in effect generally will not be treated as violating the anti-cutback rules. The Act also conforms certain plan amendment deadlines under the SECURE Act, the CARES Act, and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 to these new dates.

**Catch up contributions of highly compensated**. For tax years beginning after 2023, catch-up contributions under Code Sec. 401(k), Code Sec. 403(b), or Code Sec. 457(b) plans are subject to mandatory Roth tax treatment, for those made by participants whose wages for the preceding calendar year exceed $145,000, as annually indexed for inflation. This rule does not apply to simplified employee pensions under Code Sec. 408(k), or to SIMPLE IRAs under Code Sec. 408(p).

Even plans that do not provide a designated Roth contribution feature will now be forced to include and account for designated Roth contributions to the extent that they have employees with income that exceeds the annual limitation.

**Matching or nonelective Roth contribution option**. Before the Act, employers were not permitted to make matching or nonelective contributions on a Roth basis. For contributions made after December 29, 2022, however, a Code Sec. 401(a) qualified plan, a Code Sec. 403(b) plan, or a governmental Code Sec. 457(b) plan may permit a participant to designate some or all employer matching contributions and nonelective contributions as designated Roth contributions. This applies only to the extent that a participant is fully vested in these contributions.

**Contribution changes for SIMPLE plans**. Employers with SIMPLE plans currently must either make contributions for employees of 2% of compensation or match employee elective deferral contributions up to 3%. For tax years beginning after 2023, the Act permits an employer to make additional contributions to each employee of the plan in a uniform manner, of up to the lesser of up to 10% of compensation or $5,000 (indexed).

The Act also increases the SIMPLE annual deferral limit and the catch-up contribution at age 50 by 10%, compared to the limit that would otherwise apply in the first year this change is effective (tax years after 2023) for employers with no more than 25 employees. Employers with 26 to 100 employees could provide for higher deferral limits, but only if they either provide a 4% match or a 3% employer contribution. Similar changes to the contribution limits also apply for SIMPLE 401(k) plans.

We know that this amount of information is overwhelming, but there is much here that may affect you or your business, and induce or require you to change your retirement plan or how you handle your account and distributions. It's a lot to consider.

Be assured that we can help you with all of this. Please do not hesitate to call us for more information and our assistance.

Yours truly,

**RMD Worksheet**

**Table III (Uniform Lifetime)**

**IRS Single Life Expectancy Table**

**Client Listing Needing Follow-Up**

# IRA Required Minimum Distribution Worksheet

IRS

Use this worksheet to figure this year's required withdrawal for your traditional IRA UNLESS your spouse[1] is the sole beneficiary of your IRA and he or she is more than 10 years younger than you.

Deadline for receiving required minimum distribution:

- Year you turn age 70 ½ - by April 1 of the following year
- All subsequent years - by December 31 of that year

1. **IRA balance[2] on December 31 of the previous year.** $________
2. **Distribution period from the table below for your age on your birthday this year.** ________
3. **Line 1 divided by number entered on line 2. This is your required minimum distribution for this year from this IRA.** $________
4. **Repeat steps 1 through 3 for each of your IRAs.**

Table III (Uniform Lifetime)

| Age | Distribution Period | Age | Distribution Period | Age | Distribution Period | Age | Distribution Period |
|---|---|---|---|---|---|---|---|
| **70** | 27.4 | **82** | 17.1 | **94** | 9.1 | **106** | 4.2 |
| **71** | 26.5 | **83** | 16.3 | **95** | 8.6 | **107** | 3.9 |
| **72** | 25.6 | **84** | 15.5 | **96** | 8.1 | **108** | 3.7 |
| **73** | 24.7 | **85** | 14.8 | **97** | 7.6 | **109** | 3.4 |
| **74** | 23.8 | **86** | 14.1 | **98** | 7.1 | **110** | 3.1 |
| **75** | 22.9 | **87** | 13.4 | **99** | 6.7 | **111** | 2.9 |
| **76** | 22.0 | **88** | 12.7 | **100** | 6.3 | **112** | 2.6 |
| **77** | 21.2 | **89** | 12.0 | **101** | 5.9 | **113** | 2.4 |
| **78** | 20.3 | **90** | 11.4 | **102** | 5.5 | **114** | 2.1 |
| **79** | 19.5 | **91** | 10.8 | **103** | 5.2 | **115 and over** | 1.9 |
| **80** | 18.7 | **92** | 10.2 | **104** | 4.9 | | |
| **81** | 17.9 | **93** | 9.6 | **105** | 4.5 | | |

Once you determine a separate required minimum distribution from each of your traditional IRAs, you can total these minimum amounts and take them from any one or more of your traditional IRAs.

For additional information, see:

- Publication 590-B, *Distributions from Individual Retirement Arrangements (IRAs)*
- Retirement Topics – Required Minimum Distributions

[1] Generally, your marital status is determined as of January 1 of each year. If your spouse is the beneficiary of your IRA on January 1, he or she remains a beneficiary only for purposes of calculating the required minimum distribution for that IRA even if you get divorced or your spouse dies during the year.

[2] You must increase your IRA balance by any outstanding rollover and recharacterized Roth IRA conversions that were not in any traditional IRA on December 31 of the previous year.

# IRS Single Life Expectancy Table

| Age | Life expectancy factor | Age | Life expectancy factor | Age | Life expectancy factor |
|---|---|---|---|---|---|
| 0 | 84.6 | 41 | 44.8 | 82 | 9.9 |
| 1 | 83.7 | 42 | 43.8 | 83 | 9.3 |
| 2 | 82.8 | 43 | 42.9 | 84 | 8.7 |
| 3 | 81.8 | 44 | 41.9 | 85 | 8.1 |
| 4 | 80.8 | 45 | 41.0 | 86 | 7.6 |
| 5 | 79.8 | 46 | 40.0 | 87 | 7.1 |
| 6 | 78.8 | 47 | 39.0 | 88 | 6.6 |
| 7 | 77.9 | 48 | 38.1 | 89 | 6.1 |
| 8 | 76.9 | 49 | 37.1 | 90 | 5.7 |
| 9 | 75.9 | 50 | 36.2 | 91 | 5.3 |
| 10 | 74.9 | 51 | 35.3 | 92 | 4.9 |
| 11 | 73.9 | 52 | 34.3 | 93 | 4.6 |
| 12 | 72.9 | 53 | 33.4 | 94 | 4.3 |
| 13 | 71.9 | 54 | 32.5 | 95 | 4.0 |
| 14 | 70.9 | 55 | 31.6 | 96 | 3.7 |
| 15 | 69.9 | 56 | 30.6 | 97 | 3.4 |
| 16 | 69.0 | 57 | 29.8 | 98 | 3.2 |
| 17 | 68.0 | 58 | 28.9 | 99 | 3.0 |
| 18 | 67.0 | 59 | 28.0 | 100 | 2.8 |
| 19 | 66.0 | 60 | 27.1 | 101 | 2.6 |
| 20 | 65.0 | 61 | 26.2 | 102 | 2.5 |
| 21 | 64.1 | 62 | 25.4 | 103 | 2.3 |
| 22 | 63.1 | 63 | 24.5 | 104 | 2.2 |
| 23 | 62.1 | 64 | 23.7 | 105 | 2.1 |
| 24 | 61.1 | 65 | 22.9 | 106 | 2.1 |
| 25 | 60.2 | 66 | 22.0 | 107 | 2.1 |
| 26 | 59.2 | 67 | 21.2 | 108 | 2.0 |
| 27 | 58.2 | 68 | 20.4 | 109 | 2.0 |
| 28 | 57.3 | 69 | 19.6 | 110 | 2.0 |
| 29 | 56.3 | 70 | 18.8 | 111 | 2.0 |
| 30 | 55.3 | 71 | 18.0 | 112 | 2.0 |
| 31 | 54.4 | 72 | 17.2 | 113 | 1.9 |
| 32 | 53.4 | 73 | 16.4 | 114 | 1.9 |
| 33 | 52.5 | 74 | 15.6 | 115 | 1.8 |
| 34 | 51.5 | 75 | 14.8 | 116 | 1.8 |
| 35 | 50.5 | 76 | 14.1 | 117 | 1.6 |

| Age | Life expectancy factor | Age | Life expectancy factor | Age | Life expectancy factor |
|---|---|---|---|---|---|
| 36 | 49.6 | 77 | 13.3 | 118 | 1.4 |
| 37 | 48.6 | 78 | 12.6 | 119 | 1.1 |
| 38 | 47.7 | 79 | 11.9 | 120+ | 1.0 |
| 39 | 46.7 | 80 | 11.2 | | |
| 40 | 45.7 | 81 | 10.5 | | |

Source: Amendments to the Income Tax Regulations (26 CFR part 1) under section 401(a)(9) of the Internal Revenue Code (Code), §1.401(a)(9)-9 Life expectancy and distribution period tables, (b) Single Life Table. This table generally applies for distribution calendar years beginning on or after January 1, 2022. This table sets forth the life expectancy of an individual at each age. Transition rules under the regulations may apply to certain beneficiaries when the original account owner or their surviving spouse died before January 1, 2022. Please consult a tax advisor to discuss whether the transition rules may apply to you.

**Client Listing – Needing Follow-Up**

**<u>Clients age 61 – 64 (2025</u>**

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

**<u>Emergency Responders</u>**

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

**Those with Student Loans**

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

**Those in Federally Declared Disaster Areas**

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

**Self-Employed Taxpayers**

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

**Employers**

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

**Others**

**1.**

**2.**

**3.**

**4.**

**5.**

**6.**

**7.**

**8.**

**9.**

**10.**

**11.**

**12.**

**13.**

**14.**

**15.**

**16.**

**17.**

**18.**

**19.**

**20.**