

HAYNES BOONE

E-Benefits Newsletter

January 4, 2023

Major Retirement Legislation Passed by Congress: SECURE 2.0 Act

The SECURE 2.0 Act, passed by Congress at the end of 2022, was signed by President Biden on December 29, 2022 (the “**SECURE 2.0 Enactment Date**”). Please see the chart below for a high-level, non-exhaustive summary of the key provisions with their effective dates, some of which will have an immediate impact on retirement plan sponsors and participants. In the coming weeks, we will provide separate updates about those provisions that apply to retirement plans.

SECURE 2.0 ACT OF 2022 SUMMARY OF KEY PROVISIONS		
<u>Provision</u>	<u>Description</u>	<u>Effective Date</u>
<i>Participant Contributions and Distributions</i>		
Special rules for use of retirement funds in connection with qualified federally declared disasters	Makes permanent the following: <ul style="list-style-type: none">• Exception to 10% penalty tax for withdrawals for distributions due to a qualified federally declared disaster up to \$22,000 and such amount is taken into account as gross income over three years unless repaid to a tax preferred retirement account• Amounts distributed prior to a disaster to purchase a home can be recontributed• Employer is permitted to provide for a larger amount to be borrowed from a plan by affected individuals and for additional time for the repayment of plan loans	For disasters occurring after January 26, 2021
Employer may rely on employee certifying that deemed hardship distribution conditions are met	Permits employees to self-certify that they have had an event that constitutes a hardship for purposes of taking a hardship withdrawal	For plan years beginning after the SECURE 2.0 Enactment Date
Exception to penalty on early distributions from qualified plans	Exception to 10% penalty tax for distributions to a terminally ill individual	For distributions made after the SECURE 2.0 Enactment Date

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SECURE 2.0 ACT OF 2022 SUMMARY OF KEY PROVISIONS

<u>Provision</u>	<u>Description</u>	<u>Effective Date</u>
for individuals with a terminal illness		
Emergency savings accounts linked to individual account plans	Permits emergency savings accounts as part of a defined contribution plan up to \$2,500 for non-highly compensated employees with penalty-free withdrawals	For plan years beginning after December 31, 2023
Elective deferrals generally limited to regular contribution limit	Provides that all catch-up contributions to qualified retirement plans are subject to Roth tax treatment, except for employees with compensation of \$145,000 or less, indexed for inflation	For taxable years beginning after December 31, 2023
Indexing IRA catch-up limit	Indexing of IRA catch-up limit for participants age 50 and older	For taxable years beginning after December 31, 2023
Roth plan distribution rules	Eliminates the pre-death distribution requirement for Roth designated accounts in employer plans	For taxable years beginning after December 31, 2023
Increase in age for required beginning date for mandatory distributions	<ul style="list-style-type: none"> • Increase in age for required beginning date for mandatory distributions from age 72 to age 73 • Increase in age for required beginning date for mandatory distributions from age 73 to age 75 	<ul style="list-style-type: none"> • Starting on January 1, 2023 • Starting on January 1, 2033
Surviving spouse election to be treated as employee	Allows a surviving spouse to be treated as the deceased employee for purposes of the required minimum distribution rules	For taxable years beginning after December 31, 2023
Penalty-free withdrawal from retirement plans for individual case of domestic abuse	Exception to 10% penalty tax for distributions to domestic abuse survivors equal to the lesser of \$10,000, indexed for inflation, or 50% of the participant's account balance, and a participant has the opportunity to repay the withdrawn money from the retirement plan over three years and will be refunded for income taxes paid on money that is repaid	For distributions made after December 31, 2023
Withdrawals for certain emergency expenses	Exception to 10% penalty tax for withdrawals for certain emergency expenses, which are unforeseeable or for immediate financial needs relating to personal or family emergency expenses, up to \$1,000 per	For distributions made after December 31, 2023

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	year, and a taxpayer has the option to repay the distribution within three years	
Special rules for certain distributions from long-term qualified tuition programs to Roth IRAs	Beneficiaries of 529 college savings accounts permitted to roll over up to \$35,000 over the course of their lifetime from any 529 college savings account in their name to their Roth IRA, provided the account must have been open for more than 15 years	For distributions made after December 31, 2023
Higher catch-up limit to apply at age 60, 61, 62, and 63	Higher catch-up limits apply at ages 60 through 63 for non-SIMPLE plans to the greater of (i) \$10,000 or (ii) 150% of the regular catch-up amount for 2025, indexed for inflation, and for SIMPLE plans to the greater of (i) \$5,000 or (ii) 150% of the regular catch-up amount in 2025, indexed for inflation	For taxable years beginning after December 31, 2024
Long-term care contracts purchased with retirement plan distributions	Exception to 10% penalty tax for distributions up to \$2,500 per year for the payment of premiums for certain specified long-term care insurance contracts	Three years after the SECURE 2.0 Enactment Date
Saver's Match	Modifies Saver's Credit to convert it into a direct government matching contribution to the taxpayer's IRA or eligible retirement plan	For taxable years beginning after December 31, 2026
<i>Plan Sponsor Design</i>		
Optional treatment of employer matching or nonelective contributions as Roth contributions	Permits defined contribution plans to provide participants with the option of receiving matching contributions on a Roth basis	The SECURE 2.0 Enactment Date
Enhancement of 403(b) plans	Permits 403(b) custodial accounts to participate in group trusts with other tax-preferred savings plans and IRAs	After the SECURE 2.0 Enactment Date

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Small immediate financial incentives for contributing to a plan	Enables employers to offer <i>de minimis</i> financial incentives, not paid for with plan assets, such as low-dollar gift cards, to boost employee participation in workplace retirement plans by generally exempting <i>de minimis</i> financial incentives from prohibited transaction rules	For plan years beginning after the SECURE 2.0 Enactment Date
Eliminate the “first day of the month” requirement for governmental Section 457(b) plans	Allows elections to be made at any time prior to the date that the compensation being deferred is available for governmental Section 457(b) plans	For taxable years beginning after the SECURE 2.0 Enactment Date
Eliminating unnecessary plan requirements related to unenrolled participants	Removal of requirement to provide certain intermittent ERISA or Code notices to unenrolled participants who have not elected to participate in a workplace retirement plan, provided that such individuals receive, in addition to the SPD and other initial eligibility notices, (i) an annual reminder notice of the participant’s eligibility to participate in the plan and any applicable election deadlines, and (ii) any otherwise required document requested at any time by the participant	For plan years beginning after December 31, 2022
Multiple employer 403(b) plans	Multiple employer 403(b) plans, which are generally sponsored by charities, educational institutions, and non-profits, are permitted	For plan years beginning after December 31, 2022
Pooled employer plan modification	Pooled Employer Plans (or PEPs) may designate a named fiduciary to collect plan contributions (other than the plan’s employer)	For plan years beginning after December 31, 2022
Modification of credit for small employer pension plan startup costs	Increase in three-year small employer pension plan start-up costs to 100% for employers with up to 50 employees and a phased-out credit for employers with up to 100 employees	For taxable years beginning after December 31, 2022
SIMPLE and SEP Roth IRAs	Allows SIMPLE IRAs to accept Roth contributions and allows employers to offer employees the ability to treat employee and	For taxable years beginning after December 31, 2022

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<u>Provision</u>	<u>Description</u>	<u>Effective Date</u>
	employer SEP contributions as Roth contributions (in whole or in part)	
Employers allowed to replace SIMPLE retirement accounts with safe harbor 401(k) plans during a year	Permits a plan sponsor to replace a SIMPLE IRA plan with a SIMPLE 401(k) plan or other safe harbor 401(k) plan that requires mandatory employer contributions during a plan year	For plan years beginning after December 31, 2023
Exemption for certain automatic portability transactions	Permits a retirement plan service provider to provide employer plans with automatic portability services, including the 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 affirmatively elects otherwise	For transactions occurring on or after the date which is 12 months after the SECURE 2.0 Enactment Date
Updating dollar limit for mandatory distributions	Increases the limit employers may transfer former employees' retirement accounts from a workplace retirement plan into an IRA from a maximum account balance of \$5,000 to \$7,000	For distributions made after December 31, 2023
Treatment of student loan payments as elective deferrals for purposes of matching contributions	Permits treatment of student loan payments as elective deferrals for matching contributions under 401(k), 403(b), or SIMPLE plans	For contributions made for plan years beginning after December 31, 2023
Improving coverage for part-time workers	Reduces from three years to two years the length of service requirement for long-term, part-time worker eligibility under 401(k) plans and extends this eligibility inclusion to 403(b) plans	For plan years beginning after December 31, 2024
Expanding automatic enrollment in retirement plans requirement	Requires automatic enrollment provisions for new 401(k) and 403(b) plans	For plan years beginning after December 31, 2024

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<i>Plan Corrections</i>		
Expansion of Employee Plans Compliance Resolution System	Expansion of the Employee Plans Compliance Resolution System (or EPCRS) to (i) allow more types of errors to be corrected internally through self-correction, (ii) apply to inadvertent IRA errors, and (iii) exempt certain failures to make required minimum distributions from the otherwise applicable excise tax	The SECURE 2.0 Enactment Date
Recovery of retirement plan overpayments	Permits retirement plan fiduciaries the latitude to decide not to recoup overpayments that were mistakenly made to retirees	The SECURE 2.0 Enactment Date
Reduction in excise tax on certain accumulations in qualified retirement plans	Reduces the penalty for failure to take required minimum distributions from 50% to 25% and if a failure to take a required minimum distribution from an IRA is corrected generally in a timely manner, the excise tax on the failure is further reduced from 25% to 10%	For taxable years beginning after the SECURE 2.0 Enactment Date
Safe harbor for corrections of employee elective deferral failures	Safe harbor relief for correction of automatic enrollment and automatic escalation failures, without penalty, corrected prior to nine and a half months after the end of the plan year in which the mistakes were made	For errors after December 31, 2023
Retirement savings lost and found	Creates a national online searchable lost and found database for Americans' retirement plans at the Department of Labor	To be created no later than two years after the SECURE 2.0 Enactment Date

Plan amendments made pursuant to SECURE 2.0 Act are to be made on or before the last day of the first plan year beginning on or after January 1, 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 the provision. Plan amendment dates are also conformed under the SECURE Act, the CARES Act, and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 to these new dates (instead of 2022 and 2025).

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For further information, the Senate Finance Committee Summary of SECURE 2.0 Act is available here: https://www.finance.senate.gov/imo/media/doc/Secure%20202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf and the full year-end spending bill is available here: <https://www.congress.gov/117/bills/hr2617/BILLS-117hr2617enr.pdf>.