

SECURE 2.0 Act: Focus on 401(k) and 403(b) Plans – Plan Design Changes

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PRACTICES Retirement Plans, Employee Benefits and Executive Compensation

This article is the third in a series in which we focus on how the SECURE 2.0 Act will impact specific types of plans. The items listed below are all provisions relating to permissive and mandatory plan design changes that plan sponsors of 401(k) and 403(b) plans should consider and discuss with their third party administrators and outside counsel. Please note that some of these provisions will also apply to other types of retirement plans. For a full list of our articles concerning the SECURE 2.0 Act, including additional detail regarding the provisions summarized below, please refer to the links at the end of this article.

Permissive Plan Design Changes

- **Optional treatment of employer matching or nonelective contributions as Roth contributions.** For contributions made after December 29, 2022 (the “**SECURE 2.0 Enactment Date**”), plan sponsors may now offer participants the option to elect to receive matching or nonelective contributions on a Roth basis, provided that such Roth contributions are fully vested when contributed.
- **Small immediate financial incentives for contributing to a plan.** For plan years following the SECURE 2.0 Enactment Date, plan sponsors can offer de minimis financial incentives (not paid for with plan assets) to incentivize participants to make contributions.
- **Modification of credit for small employer plan startup costs.** For taxable years beginning after December 31, 2022, Congress increased the credit for plan start-up costs for small employers with up to 50 employees to 100% of the qualified costs for the first three years of the plan up to a cap of \$5,000. In addition, for 401(k) or 403(b) plans, an additional credit is provided for the first five years of the plan of up to \$1,000 per employee (phased out for employers with 51 to 100 employees) with the amount decreasing after the second year.
- **Increase in the small benefit cash out amount.** Effective for distributions made after December 31, 2023, the amount that plan sponsors may elect to roll over to a default IRA in connection with a terminated participant account balance will be increased to \$7,000 from \$5,000.
- **Automatic portability feature services.** For transactions occurring on or after December 29, 2023, plan sponsors may work with service providers to provide their plans with automatic portability services, which will allow automatic portability from the employer’s plan into the participant’s new employer’s retirement plan, unless the participant affirmatively elects otherwise.
- **Emergency savings accounts.** For plan years beginning after December 31, 2023, plan sponsors may allow non-highly compensated employees to contribute up to \$2,500 to an

emergency savings account linked to the sponsor's individual account plan. Such contributions must be made on a Roth-only basis and are subject to additional conditions.

- **Treatment of student loan payments as elective deferrals for purposes of matching contributions.** For contributions made for plan years beginning after December 31, 2023, plan sponsors may treat student loan payments as elective deferrals for purposes of participant eligibility to receive matching contributions.

Plan Participation and Contributions Changes

- **Catch-up contributions.** For plan years beginning after December 31, 2023, all catch-up contributions for employees with compensation in excess of \$145,000 (indexed for inflation) will be subject to Roth tax treatment. Further, for taxable years beginning after December 31, 2024, the catch-up contribution limit for ages 60 through 63 will be the greater of (i) \$10,000 or (ii) 150% of the regular catch-up amount for 2025, indexed for inflation.
- **Improving coverage for long-term, part-time workers.** For purposes of the length of service requirement for the eligibility of long-term, part-time workers under a 401(k) plan, the SECURE 2.0 Act reduces such requirement from three to two years and extends the eligibility inclusion to 403(b) plans for plan years beginning after December 31, 2024.
- **Expanding automatic enrollment in retirement plans.** Plans that add a cash or deferred arrangement after the SECURE 2.0 Enactment Date (including newly established plans) are required to add automatic enrollment provisions for plan years beginning after December 31, 2024,
- **Saver's match:** The Saver's Credit will be converted into a direct government matching contribution to the participant's plan for taxable years beginning after December 31, 2026.

Although plan amendments are not required under the SECURE 2.0 Act until the last day of the first plan year beginning on or after January 1, 2025, plan sponsors should consult with their third party administrator to determine which changes are necessary to ensure that their plans are in operational compliance and when permissive changes will become available through the third party administrator's platform. For further information on the above provisions and the SECURE 2.0 Act generally, please refer to our previous articles provided below.

[SECURE 2.0 Act: Focus on 401\(k\) and 403\(b\) Plans Distribution and Withdrawal Changes](#)

[SECURE 2.0 Act: Focus on Pension Plans](#)

[SECURE 2.0 Act: Permissive Plan Design Changes](#)

[SECURE 2.0 Act Increases Age for Required Minimum Distributions](#)

[SECURE 2.0 Act: Changes to Plan Corrections Guidance](#)

[SECURE 2.0 is Here! What's Next for Plan Sponsors?](#)

[Major Retirement Legislation Passed by Congress: SECURE 2.0 Act](#)