

SECURE 2.0 Act: Focus on Non-Governmental 457(b) Plans

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PRACTICES Employee Benefits and Executive Compensation, Retirement Plans

This article is the sixth 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 provisions that non-governmental plan sponsors of 457(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 below.

Required Minimum Distributions (“RMDs”)

- **Increase in age for beginning date.** The SECURE 2.0 Act increases the age for determining the required beginning date for RMDs from 72 to 73 for participants who were born in years 1951 through 1959 (*i.e.*, an individual “who attains age 72 after December 31, 2022, and age 73 before January 1, 2033”) and from age 73 to 75 for participants who were born in 1959 or later (*i.e.*, an individual “who attains age 74 after December 31, 2032”). Presumably, the incongruity for individuals born in 1959 (who both attained age 73 before January 1, 2033, and attained age 74 after December 31, 2032) will be corrected by a future technical amendment.
- **Partial annuitization aggregation.** The SECURE 2.0 Act now permits a participant to elect to aggregate distributions from a tax-preferred retirement account that includes an annuity for both the annuity portion and the rest of the account for purposes of determining RMDs. This is effective on the SECURE 2.0 Act enactment date of December 29, 2022 (the “**SECURE 2.0 Enactment Date**”).
- **Reduction in excise tax on a failure to take RMDs.** In the event a participant receives a penalty for failing to take an RMD, the IRS excise tax is reduced from 50% to 25% (and to 10% if corrected within two years) on the missed RMD amount for taxable years beginning after the SECURE 2.0 Act Enactment Date.
- **Surviving spouse election to be treated as employee.** Effective for calendar years beginning after December 31, 2023, surviving spouses are permitted to elect to be treated as the deceased employee under their spouse’s qualified retirement plan for purposes of the RMD rules. Prior to this change, the surviving spouse election could only be applied to the deceased spouse’s IRA.

Changes to Withdrawal Rules

- **Long-term care premiums.** Effective three years after the SECURE 2.0 Enactment Date, participants may receive distributions to pay premiums of up to \$2,500 per year for certain specified long-term care insurance contracts.
- **Employee self-certification.** For 457(b) plan hardship withdrawals generally, employees are permitted to self-certify they have had an event that constitutes an unforeseeable emergency beginning after the SECURE 2.0 Act Enactment Date.

- **Small benefit distribution limit increased.** The limit for making small benefit distributions (*i.e.*, distributions that can be made before a distribution is otherwise eligible to be made to a participant) from a 457(b) plan is increased from \$5,000 to \$7,000 after December 31, 2023.

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 Governmental 457\(b\) Plans](#)
- [SECURE 2.0 Act: Focus on 401\(k\) and 403\(b\) Plans – Changes to Plan Corrections Guidance](#)
- [SECURE 2.0 Act: Focus on 401\(k\) and 403\(b\) Plans – Plan Design Changes](#)
- [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](#)