SECURE 2.0: WHAT'S COMING AND WHAT WAS CLARIFIED IN 2024

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I. WHAT IS SECURE 2.0?

A. SECURE 2.0 Act of 2002 ("Secure 2.0") was enacted with bi-partisan support by Congress and signed into law by President Biden on December 29, 2022.

B. Generally, it was designed to improve retirement savings options and accomplish three goals:

1. Increase retirement savings;
2. Improve retirement plan rules; and
3. Lower the cost of establishing and maintaining plans.

C. SECURE 2.0 contains 92 provisions dealing with retirement savings and is considered by some to be the most extensive retirement plan and savings legislation since ERISA.

D. Generally, SECURE 2.0 was effective in 2023, but it also provides for other effective dates extending into 2025 and later.

II. DISTRIBUTIONS FROM INHERITED IRAs

A. Both the SECURE Act and SECURE 2.0 contained numerous provisions dealing with required minimum distributions ("RMDs") from qualified retirement plans and IRAs. The SECURE Act made two significant changes to the handling of distributions to the beneficiaries of IRAs that dramatically changed planning opportunities for those IRAs on the death of the IRA owner:

1. For decedents dying on or after January 1, 2020, "stretch IRAs" were eliminated. Prior to that date, inherited IRA beneficiaries could spread the distribution of that IRA over their life expectancy without regard to their age. Since Congress believed that the purpose of IRAs was to support the individual's retirement and not serve as a "tax deferral technique," they introduced a new 10-year rule for most beneficiaries.

2. Under the 10-year rule, all "non-eligible designated beneficiaries" were subject to a requirement that the inherited IRA must be fully distributed by the end of the 10th year following the year of the IRA owner's death.

3. In 2022, when proposed regulations were first released, the IRS clarified that if the IRA owner had reached their RMD date, the beneficiary would be required to continue to take annual distributions during the 10-year period and couldn't simply wait until the end of the 10-year period to complete their distribution.

4. The RMDs for the beneficiaries will be based upon their life expectancy (and not the IRA owner's life expectancy) during the ten-year payout period.

5. A "non-eligible beneficiary" is anyone other than:

    a. The spouse;

    b. A minor child; and

    c. An individual less than 10 years younger than the IRA owner.

6. Because of this confusion, the IRS has continued through 2024 to forgo any excise taxes on beneficiaries who did not take their RMDs. Under recent guidance and final regulations, the IRS has indicated that these RMDs will be required commencing in 2025.

III. SAVING MORE THROUGH THE $10,000 “BONUS” CATCH-UP CONTRIBUTION LIMIT

A. The catch-up contribution concept was first introduced in 2002 to help older plan participants (age 50 and older) increase retirement savings as they reach retirement.

1. When first available, it was capped at $1,000 per year, but is adjusted annually for cost-of-living increases.

2. For 2024, the limit is set at $7,500.

B. Starting in 2025, the limit will further increase for certain 401(k) plan participants.

1. The “bonus” catch-up limit will only be available for participants for years in which they’ve attained at least age 60 but are not older than age 63 by the end of that calendar year.

2. Their catch-up limit will be set at the greater of: (1) $10,000 or (ii) 150% of the standard catch-up limit for that year. For example, if the standard limit is $8,000 in 2025, the “bonus” contribution limit will be $12,000.

3. Like standard catch-up contributions, “bonus” catch-up contributions for high-wage earners will also be subject to the requirement that contributions be made to a Roth account if their prior year’s FICA wages were more than $145,000 (subject to annual COLA increases). Note that the IRS has announced that for 2025, both standard catch-up contributions and bonus catch-up contributions will not be subject to the mandatory Roth requirement for high-wage earners.

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IV. EXPANDED OPPORTUNITIES FOR ACCESSING RETIREMENT SAVINGS FOR CRITICAL, PERSONAL OR FAMILY EMERGENCIES

A. Employees, especially those that are far from retirement, often express their concern about "locking away" savings that won't be available for unexpected emergencies.

1. Clearly this has a chilling effect on 401(k) savings for those employees.

2. Congress and the IRS have attempted to ameliorate those concerns by including a complex set of guidelines that allow plan sponsors to include "hardship distribution" rules in 401(k) plans.

a. Distributable opportunities are generally limited to specified events (expenses to prevent being foreclosed upon or evicted, home buying expenses for a principal residence, burial or funeral expenses, certain medical expenses, etc.).

b. Fear of violating the "hardship distribution" rules has limited their availability and use by plan participants.

B. Recognizing the benefits of incentivizing retirement savings, SECURE 2.0 includes a number of new situations where plan participants can access funds.

1. Starting with plan years beginning in 2004, 401(k) plans may authorize "emergency distributions" to participants for themselves or family members.

a. Recently issued IRS Notice 2024-55 indicates that participants can access up to $1,000 of their account including pretax contributions without penalty for necessary, unforeseen and immediate expenses. Routine expected expenses will not qualify.

b. No proof is necessary for the plan. Self-certification is acceptable.

c. A participant may only request an emergency distribution once each calendar year; however, the participant cannot request another emergency distribution within 3 years unless they have repaid the prior distribution.

d. If the distribution is repaid within 3 years, the participant may avoid taxation by filing an amended return for the year of distribution.

e. These provisions are optional for plan sponsors.

f. The 10% additional tax is waived, but the distributions are taxable. They are not eligible for rollover.

2. Also starting with plan years beginning in 2024, 401(k) plans may authorize distributions for certain "victims of domestic abuse."

a. Recently issued IRS Notice 2024-55 indicated that "domestic abuse" includes "physical, psychological, sexual, emotional or economic abuse including efforts to control, isolate, humiliate, or intimidate 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."

b. Limited to abuse from a partner, spouse or other individuals in a domestic setting.

c. The participant must certify: (i) the actions meet the definition of domestic abuse, (ii) the amount of the distribution does not exceed the lesser of $10,000 or 50% of the participant's account

balance and (iii) the distribution is within 1 year of the date of the incident.

d. Distributions may be utilized for (i) legal fees securing protective orders, (ii) counseling or mental health related expenses and (iii) relocation expenses for safety purposes.

e. Like emergency distributions, this distribution may be repaid within 3 years.

f. This provision is optional for plan sponsors.

g. The 10% additional tax is waived, but the distributions are taxable. They are not eligible for rollover.

3. Implementation of these provisions.

a. The plan documents must be amended to include these provisions no later than December 31, 2026.

b. In the interim, plan sponsors may implement these provisions with appropriate notices and communications to plan participants informing them of the availability of these distribution opportunities.

V. QUALIFIED STUDENT LOAN PAYMENT (“QSLP”) MATCH PROGRAMS

A. SECURE 2.0 now allows employers to make matching contributions for employees’ qualified student loan payments to 401(k) plans.

B. The IRS has issued broad guidance in Notice 2024-63 for plan years beginning after December 31, 2024 providing employers with answers concerning operational rules for QSLPs.

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C. What constitutes a qualified student loan?

1. IRC Section 221(d)(1) defines a qualified education loan as indebtedness paid by a taxpayer solely to pay higher education expenses.

2. The expense must be incurred by the taxpayer, their spouse or their dependents.

D. What is a QSLP?

1. The payment toward a qualified student loan must be made by the plan participant during the plan year.

2. The participant must have a legal obligation to make the payment under the terms of the loan.

3. The loan payment when added to the participant's 401(k) deferrals is limited for match purposes to the IRC Section 402(g) maximum amount, plus the catch-up contribution maximum for the year. For example, if an employee who is under age 50 defers $12,000 in 2025 and repays $15,000 of a qualified student loan, if the 402(g) limit is $24,000 for 2025, only $12,000 of the loan repayment will qualify for the match.

4. The loan repayment must be certified annually by the employee.

    a. Self-certification is permitted.

    b. It must contain: (i) the amount of the repayment, (ii) date(s) of the repayment(s), (iii) proof of payment by the employee, (iv) evidence that the loan was used to pay higher education expenses of the employee, spouse or dependent and (v) verification of the employee's legal obligation to pay.

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5. Who must be eligible and what limitations may be placed on the matching provisions?

   a. If a QSLP match is implemented, all participants must be eligible. Plan participants may not be excluded by classification (i.e., job description, locations, etc.).

   b. QSLP matches may not be limited to: (i) the employees own education expenses; (ii) particular degree programs; or (iii) particular schools.

VI. MANDATORY AUTO-ENROLLMENT FOR NEW 401(K) PLANS

A. SECURE 2.0 now mandates for all 401(k) plans established after December 29, 2022 that auto-enrollment is mandatory for plan years beginning after December 31, 2024. It also mandates auto-enrollment for profit sharing plans which first added 401(k) deferral features after December 29, 2022.

1. Auto-enrollment plans have been permitted for employers for many years if voluntarily adopted.

2. The perceived benefits of auto-enrollment include:

   a. Increased participation among employees leading to larger retirement savings.

   b. From the plan sponsor’s perspective, increased participation increases the likelihood of passing the ADP test with larger deferral percentages.

3. The perceived detriments of auto-enrollment include:

   a. Potentially unhappy employees when they recognize that their take-home pay was reduced with 401(k) deferrals (even though they failed to make an affirmative deferral election.

   b. From the plan sponsor's perspective, there are increased costs and complexities of plan administration.

B. How the mandatory auto-enrollment features work:

1. Must automatically enroll participants initially at deferral rates of not less than 3% or more than 10%.

2. Must increase the deferral rates annually by 1% per year up to at least 10% total; however, it cannot exceed 15% if chosen by the plan sponsor.

3. If the initial deferral rate is at least 10%, then there need not be any automatic increases.

4. Participants will be able to opt out or select different deferral rates.

5. Participants will be auto-enrolled upon meeting the eligibility requirements of the plan.

6. If an investment choice isn't chosen by the plan participant, then deferrals will be auto-invested in the plan's Qualified Default Investment Alternative (QDIAs).

7. New employers first adopting an old, multiple employer 401(k) plan after December 29, 2022 will also be subject to the mandatory auto-enrollment rules.

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8. Within 90 days of the participant’s first auto-deferral, they may elect to withdraw all of their deferrals and earnings to date.

9. The plan must provide a notice that details the participant’s right to elect out or select a different deferral rate.

10. Exceptions to the auto-enrollment requirement will apply for new businesses that have been in existence for less than 3 years and small employers with 11 or fewer employees.

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