Summer 2023

Estate Planning Update Summer 2023 - Retirement Saving Updates: SECURE ACT 2.0

The Setting Every Community Up for Retirement Enhancement (SECURE) Act 2.0 was signed into law on December 29, 2022, and it makes several key updates to the SECURE Act, which was effective as of January 1, 2020. Below is a summary of the key changes imposed by SECURE 2.0:

1. Increase in RMD Age

Effective as of January 1, 2023, the age at which plan participants must begin taking required minimum distributions (RMDs) from traditional IRAs and workplace retirement accounts has increased from 72 to 73. Effective January 1, 2033, the threshold age will increase to 75.

2. Catch-Up Contributions

Catch-up contributions are intended to enable individuals over age 50 to make up for missed retirement plan contributions in their earlier years by increasing the limits applicable to annual retirement plan contributions. SECURE 2.0 increases the catch-up contribution limits as follows:

- *IRAs*: Beginning in 2024, the $1,000 catch-up contribution amount for IRA participants 50 or older will be indexed for inflation.
- *401(k)s*: The current 401(k) catch-up contribution limit is $7,500 for individuals over age 50. Beginning in 2025, the catch-up limit for individuals between ages 60 and 63 will increase to the greater of $10,000 or 150 percent of the regular catch-up amount. Beginning in 2026, this $10,000 figure will be indexed for inflation.
- *Roth contributions required*: Beginning in 2024, individuals earning more than $145,000 in a calendar year may only make Roth (after-tax) catch-up contributions. This $145,000 figure is indexed for inflation.

3. Matching for Roth Accounts

Effective immediately, SECURE 2.0 authorizes Roth treatment of employer matching contributions to Roth accounts. Note, however, that any matching contribution amount elected as a Roth contribution will be treated as income to the employee in the year of the contribution.

4. Qualified Charitable Distributions

Under existing law, the qualified charitable distribution rules allow individuals over 70½ to donate up to $100,000 to one or more charities directly from a qualified retirement account in lieu of taking RMDs. Effective immediately, SECURE 2.0 authorizes individuals over 70½ to make a one-time $50,000 qualified charitable distribution to a split interest vehicle, such as a charitable remainder trust or a charitable gift annuity. This $50,000 amount will count toward the RMD amount and will be adjusted for inflation.

5. Student Loan 401(k) Matching

Beginning in 2024, employers may treat an employee's payments toward student loan debt as if they were 401(k) contributions for purposes of 401(k) matching. As a result, employers are permitted to make "matching contributions" to the employee's plan account even though the employee didn't actually contribute to the plan. This is a completely discretionary feature, and employers are not obligated to treat student loan payments as 401(k) contributions.

6. Automatic Enrollment

Beginning in 2025, employers establishing new 401(k) or 403(b) plans must have default automatic enrollment for all eligible employees. The initial contribution must be at least 3 percent but not more than 10 percent of pretax earnings. After the first year of participation, plans are also to provide for an automatic annual increase of 1 percent per year until at least 10 percent of compensation is contributed to the plan, but it is not to exceed 15 percent. Employees may opt out of making contributions or elect to have contributions made at a different percentage.

7. Emergency Savings Options and Long-Term Care Premiums

Beginning in 2024, employers can add Roth emergency savings accounts for "non-highly compensated employees." Contributions will be limited to $2,500 annually, or a lower amount set by the employer. The first four withdrawals in a year would be tax-free and penalty-free. In addition, beginning in 2026, withdrawals of up to $2,500 per year can be made to pay premiums on certain types of long-term care contracts. If the individual is under age 59½, the withdrawal will be penalty-free.

8. Penalty Reductions and Early Withdrawals

Beginning in 2023, the penalty for failing to take an RMD decreases from 50 percent to 25 percent of the RMD amount not taken. This penalty is further reduced to 10 percent if (i) the individual withdraws the RMD amount previously not taken and (ii) submits a corrected tax return and pays any tax in a timely manner (before receiving notice of an assessment of RMD excise tax and within two years after the year of the missed RMD). Under existing law, a 10 percent penalty is imposed on withdrawals from a retirement account prior to age 59½. SECURE 2.0 sets forth the following new exceptions from this 10 percent penalty:

- An early withdrawal of up to $1,000 "for purposes of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses." Such a withdrawal may only be taken once every three years, or once per year if the distribution is repaid within three years.
- An early withdrawal by an individual who is certified by a physician as having a terminal illness or condition that can reasonably result in death in 84 months or less. The amount withdrawn must be repaid within three years.
- Beginning in 2024, "hardship" withdrawals are available for individuals who have been subject to domestic abuse. Such withdrawals are limited to the lesser of $10,000 or 50 percent of the vested balance of the retirement account. The withdrawal must occur within one year after the individual became a victim of abuse and must be repaid within three years.

Penalties Waived on Certain Retirement Plans

In February 2022, the U.S. Treasury published proposed regulations implementing the SECURE Act applicable to RMDs from inherited retirement accounts. IRS Notice 2023-54 (which extends the relief set forth in IRS Notice 2022-53) states that final regulations with respect to inherited retirement accounts will apply no earlier than the 2024 distribution year. Therefore, beneficiaries of inherited retirement plans who failed to take 2021, 2022 or 2023 life expectancy withdrawals will not be treated as failing to satisfy the RMD rules. The IRS will not enforce the 50 percent

excess accumulation penalty tax for designated beneficiaries who do not take their 2021, 2022 or 2023 life expectancy payments. The relief is limited to distributions required to be made in 2021, 2022 or 2023.