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The Secure Act 2.0

Key Provisions Affecting Retirement Plans

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Retirement plans serve a wide-ranging constituency—individuals saving for their own retirement, businesses that want to provide an appealing benefit that attracts and retains employees, and society at large, which seeks to ensure seniors have adequate income once their working years have passed. Since the Employee Retirement Income Security Act ("ERISA") was passed in 1974, Congress has periodically updated the regulations surrounding this $37.5 trillion industry, seeking to enhance both coverage and outcomes.

Coverage remains a distinct concern, as only 67% of private industry workers had access to an employer-sponsored plan as of March of 2020, with 52% having access solely to a defined contribution plan.[1] Further, just 41% of American workers are contributing to their defined contribution plan,[2] and more than half of Americans are concerned that they are not where they need to be, in terms of saving for retirement[3] – a worry that has broad implications for employers looking at worker productivity and retention.

At the end of 2019, when the SECURE Act was signed into law, almost overnight, both individuals and employers began to revisit or adjust their expectations and plans. Employees were considering questions such as, *"When do I plan to retire, or how will I leave assets to my heirs, or how should I handle tax planning for distributions?"*

Employers began contemplating the implications of lower barriers for multiple employer plans, increased tax credits for start-up plans, and expanded eligibility for part-time employees, to name a few.

Now Congress is crafting additional legislation designed to bring further changes to both individuals and retirement plans. The SECURE Act 2.0, as it is known, has passed the House; two companion bills, the Rise & Shine Act and the EARN Act, are currently working their way through the Senate.[4] Since the bills are yet to be finalized, we do not know with certainty what the final law will contain, but outlined below are several key provisions currently included in the proposed legislation.

Retirement Plan Participants

Required Minimum Distributions

The SECURE Act increased the age that required minimum distributions (RMDs) must begin from age 70 to 72. SECURE Act 2.0 would move the age to 73 by 2022, to 74 by 2029 and finally to 75 by 2032.[5]

Catch-Up Contribution Modifications

Currently, employees aged 50 and older can contribute an additional $6,500 to 401(k) and 403(b) plans. As it is currently written, SECURE Act 2.0 would increase that amount of the catch-up to $10,000 for employees ages 62 through 64 beginning in 2023 (the Senate version includes a similar provision, but the age range is 60 – 63). For SIMPLE IRA plans, participants between the ages of 62 and 64 will be able to contribute an additional $5,000. In addition, the bill mandates that all catch-up contributions made after January 1, 2023, will be treated as Roth, meaning that they will be after-tax contributions.[6]

Saver's Credit

The House bill enhances and simplifies the Saver's Credit by creating a single credit for all savers below the AGI threshold of $48,000 (joint filers). The EARN Act would modify the existing Saver's Credit to make it refundable and turn it into a direct government matching contribution to the taxpayer's IRA or employer-sponsored plan. It would be treated as a pre-tax contribution, making it taxable at distribution.

Employer-Sponsored Plans

Automatic Enrollment

Under the SECURE Act 2019, 401(k) plans were permitted, but not required, to have automatic enrollment policies. SECURE Act 2.0 goes further; it contains a provision that new employees be automatically enrolled in their employer's plan when they become eligible at a pre-tax contribution level of at least 3%. In addition, there is also an auto-escalation clause that mandates that this percentage increase by 1% annually to at least 10% of an employee's pay but no more than 15%.[7] Companies that are less than three years old or employ 10 people or less may opt out of this provision. Additionally, the Rise & Shine Act, which the Senate is currently working on as a companion to the SECURE Act 2.0, would require employers to prompt those participants who have opted out of the plan to reconsider participating in the plan at least every three years.[8]

Student Loan Borrowers

Individuals currently making payments on student debt but not contributing to their employer retirement plans would now be eligible for employer match contributions based on their student loan payments. These employer match payments would be put into their retirement account on a pre-tax basis, not toward student loans.[9]

Emergency Savings Accounts

The Rise & Shine Bill allows employers to offer an emergency savings account in combination with defined contribution retirement plans. The contributions would be capped at $2,500 or 3% of the employee's pay, and the account balances could not exceed $2500. These contributions would receive no tax preferences.[10]

Small Business Tax Credits

SECURE Act 2.0 changes the 3-year, small employer, start-up tax credit introduced in the SECURE Act to 100% for companies with up to 100 employees with a per-employee cap of $1,000.

Automatic Portability Transactions

Currently, participants must opt in to having their small balances automatically moved from their previous employer plan to their new employer plan. The new legislation would institute a new default in plan design meant to stem account "leakage"—the result of small plan balances being distributed to the participant following termination of employment. Under auto-portability, participants would have to affirmatively opt out of having their small balances moved to either their new employer plan or an IRA. Employers will be eligible for a $500 tax credit for the year in which they adopt the program.

Other Provisions

SECURE Act 2.0 also makes it easier for 403(b) plans to participate in multiple employer plans (MEPs) and lessens the penalties for some reporting mistakes.[11] Both versions of the legislation would eliminate unnecessary plan requirements related to unenrolled participants, and multiple communications would be reduced to a single, annual notice of eligibility to participate. Both versions also direct the creation of a searchable "Lost and Found" database to collect information on benefits owed to missing or non-responsive participants, adding to the reporting requirements of plan sponsors.[12]

Conclusion

The provisions outlined above are not an exhaustive list of all the provisions that will potentially be included in SECURE Act 2.0, the EARN Act, and the Rise & Shine Act, but we have highlighted some of the major provisions that seem likely to become law as early as the end of this year.

Keeping abreast of the proposed changes can help both individuals and employers act quickly to adjust to any changes that come. For employer-sponsored plans, it is worth considering incorporating some of the proposed changes, such as auto-enroll and auto-increase, now instead of waiting for these plan features to be mandated. If you have any questions regarding this legislation, please contact Roehl & Yi at 541-683-2085.

Roehl & Yi will continue watching the proposed legislation and help make any needed adjustments to your plan (both personal and institutional) if the retirement landscape shifts once again.

Contact a Roehl & Yi Advisor

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Footnotes:

[1]https://www.bls.gov/opub/ted/2021/67-percent-of-private-industry-workers-had-access-to-retirement-plans-in-2020.htm

[2]https://www.personalcapital.com/blog/retirement-planning/average-401k-balance-age/#:~:text=While%20the%20401k%20is%20one,%3A%2068%25%20of%20employed%20Americans.

[3]https://www.bankrate.com/retirement/retirement-savings-survey-november-2021/

[4]https://www.bankrate.com/retirement/retirement-savings-survey-november-2021/

[5]https://www.forbes.com/advisor/retirement/secure-act-2/

[6]https://www.forbes.com/advisor/retirement/secure-act-2/

[7]https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/congress-considers-a-new-round-of-retirement-legislation.aspx

[8]https://www.forbes.com/advisor/retirement/secure-act-2/

[9]https://www.forbes.com/advisor/retirement/secure-act-2/

[10]https://www.thinkadvisor.com/2022/07/12/to-save-for-retirement-workers-need-an-emergency-savings-solution/?j=248746&sfmc_sub=313238&l=16_HTML&u=3363347&mid=7304377&jb=17&utm_source=SFMC&utm_medium=email&utm_campaign=RIS_WSRS_FP_M_R_RetireWireExisting0722_E_Issue14&utm_content=Rise%26Shine_CTA1buttonlink_E&sub_key=YXVhbGtiMjAxY29pMDAzNjEwMDAwMGIwdzY0QUFBOThlaW9lem1maGpr&mid=7304377

[11]https://www.forbes.com/advisor/retirement/secure-act-2/

[12]https://www.pionline.com/legislation/senators-introduce-bipartisan-auto-portability-bill