Worldwide Employee Benefits (WEB) Network
New York Chapter

Here comes SECURE 2.0 - déjà vu all over again

February 16, 2023

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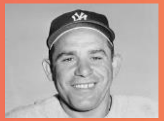
Here comes SECURE 2.0 déjà vu all over again 

February 16, 2023

SECURE 2.0

Over 90 provisions, more than 70 of which affect retirement plans

- Improve ability to save for retirement, primarily through the predominant savings vehicle — defined contribution plans
- Clarify certain provisions of the SECURE Act of 2019
- Provide plan sponsors with tools to enhance defined contribution plans
- Simplify plan administration

While employee financial wellbeing is a driving factor when considering new SECURE 2.0 options, implementation considerations are critical in your decisions

Legislative history

Setting Every Community Up for Retirement Enhancement of 2019 (SECURE 1.0)

Securing a Strong Retirement Act (H.R. 2954), passed by the House on March 29, 2022

Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg (RISE & SHINE) Act, approved by the Health, Education, Labor and Pensions (HELP) Committee on June 14, 2022

Enhancing American Retirement Now (EARN) Act, approved by the Senate Finance Committee on June 22, 2022

Consolidated Appropriations Act, 2023

SECURE 2.0 Act of 2022, enacted December 29, 2022

SECURE 2.0 Act of 2022

Part of the Consolidated Appropriations Act of 2023

Sections affecting retirement plans	
Title I	Expanding coverage and increasing retirement savings
Title II	Preservation of income
Title III	Simplification and clarification of retirement plan rules
Title IV	Technical amendments
Title V	Administrative provisions
Title VI	Revenue provisions

SECURE 2.0 timeline – select provisions

Mandatory changes

Additional agency guidance may impact implementation of these rules

Date of enactment or earlier *

- Overpayments
- Disaster relief
- QLAC changes
- Roth accounts may receive match and nonelective contributions
- Penalty-free distributions for terminal illness and to firefighters
- Birth and adoption repayment period
- EPCRS expansion
- Enhancing retiree health benefits
- Partial annuitization

2023

- Change in RMD age and tax
- Self-certification of hardships
- Unenrolled participant disclosures
- Cash balance projected interest crediting rate

2024

- Roth catch-up contributions for high earners
- Matching contributions based on student loan repayments
- Increase in mandatory cash-outs
- Pension-linked emergency savings accounts
- DB plan annual funding notice
- PBGC premium fixed
- RMDs not required from designated Roth accounts
- RMD rule for spousal sole-beneficiary election
- Lost and found database
- Penalty-free distributions for emergency expenses and to domestic abuse victims
- Blended performance benchmarks
- Lump sum distribution notices
- Relief for elective deferral failures

2025

- DC auto enrollment required
- Long-term part-time employee service periods shortened in DC plans
- Increased catch-up contribution limits for ages 60-63
- Penalty-free distribution of long-term care insurance or coverage
- Last day of the 2025 plan year deadline for amendments to comply with SECURE 2.0

2026 and later

- Last day of the 2027 plan year deadline for an amendment to comply with SECURE 2.0 for governmental and collectively bargained plans
- Plan benefit statement – hard copy
- Savers match tax credit contributions
- RMD age increased to 75

*** Date of enactment is December 29, 2022**

Agenda

- Introduction
- Required minimum distributions (RMD) and other changes to DB/DC plans
- Defined contribution (DC) plans
- Defined benefit (DB) plans
- Administrative simplification
- Questions

Note: Most defined contribution plan changes apply to 401(k), 403(b), and 457(b) plans — exceptions noted. Operational compliance is effective as noted.

Required minimum distributions (RMDs) and other changes to DB/DC plans

Changes to RMDs

Increase in RMD age (Section 107)

- SECURE 1.0 — age 72 if born after June 30, 1949 but before January 1, 1951; still age 70½ if born before then
- SECURE 2.0
  - Age 73: birthdate January 1, 1951 to December 31, 1959
  - Age 75: birthdate on or after January 1, 1959

Considerations

- Clarification needed for participants born in 1959 — is RMD age 73 or 75?
- Does the plan want to require distribution at prior RMD age or in-service?
- Review service provider implementation
  - Born in 1951, RMD delayed one year

2023

Reduction on excise tax on late RMDs (Section 302)

- Personal excise tax reduced from 50% to 25%
- Reduced further to 10% if corrected (by receipt of distributions and payment of 10% excise tax) within a two-year window

Considerations

- Notifications of late RMDs should describe the opportunity to further reduce the excise tax, even where the sponsor is filing a VCP requesting waiver of the excise tax

2023

Surviving spouse election (Section 327)

- If participant dies before entire benefit is distributed, the surviving spouse can elect to be treated as the participant for purposes of determining RMD age and amount
- IRAs have allowed spouses to treat IRA as their own for years

Considerations

- Will require updates to beneficiary communications and distribution processing (forms, special tax notices, etc.)

2024

Changes to RMDs in DC plans

Qualified longevity annuity contracts (Section 202)

- "QLACs" (fixed deferred annuity that generally begins payment between ages 80 and 85) excluded from RMD calculations even though not required to commence by RMD age
- Maximum premium of $200,000 (indexed), increased from lesser of 25% of account balance or $145,000

Considerations

- SECURE 2.0 clarifies that J&S benefits under a QLAC may continue to a former spouse after divorce
- Removal of percentage cap may make QLACs more attractive in accounts with lower balances

Date of enactment

Life annuities (Section 201)

- Removed certain barriers to life annuities in DC plans
- Can now provide guaranteed annual increases <5%, additional lump sum options (including commutation and refund features) and policy dividends

Considerations

- May make an annuity payment option under a DC plan more attractive — mostly codifies current regulations
- No change to the spousal consent requirements (a major barrier remains).
- Treasury Secretary to amend regulations; good faith compliance until then

2023

Special needs trusts (Section 337)

- SECURE 1.0 limited lifetime distributions to non-spouse beneficiaries (10-year rule)
- Special rules available for trusts set up as beneficiary to a disabled or chronically ill beneficiary
- Can now have a charitable organization as successor beneficiary to that individual

Considerations

- Plans have the option of offering lifetime distributions to certain non-spouse beneficiaries

2023

Changes to RMDs in DC plans (cont'd)

RMD date for designated Roth accounts (Section 325)

- Roth IRAs always exempt from RMD rules until participant's death (then follow the same rules as traditional IRAs), unlike designated Roth accounts under DC plans which had to start RMDs during employee's lifetime (same as non-Roth accounts)
- Roth accounts under DC plans now can delay RMDs until after death just like Roth IRAs

Considerations

- Change is not applicable to distributions required before 1/1/24, even if permitted to be paid after that date (e.g., 4/1/24 is RMD date for participant who reaches age 73 in 2023)
- Recordkeeper/administrative changes

Tax years beginning after 12/31/23

Elimination of penalty on partial annuitization (Section 204)

- DC plans with annuities can let participants elect to include distributions from annuity contracts when determining whether RMD requirements for the year are met (previously only allowed in year of annuity purchase if bought with entire balance)

Considerations

- May increase administrative complexity; e.g., will need to develop a method to collect participant elections and track amounts paid from annuity contracts
- Would need IRS guidance on valuing the annuity for this purpose

Date of enactment

Additional changes to DC/DB plans

Small benefit cashouts (Section 304)

- Plans can require that benefits under $5,000 be distributed in a lump sum without consent provided that benefits between $1,000 to $5,000 will be rolled over to an employer-designated IRA unless participant elects otherwise
- Effective January 1, 2024, the $5,000 limit is raised to $7,000

Considerations

- If this change is adopted, communications and distribution processes would need to be changed, in some cases adding direct transfers
- Modifications/plan amendment may be needed in agreement with IRA provider

Distributions after 12/31/23

Retroactive benefit accruals (Section 316)

- Generally voluntary plan amendments must be adopted by end of year in which they become effective
- Effective for plan years beginning after December 12, 2023, amendment to increase benefits/contributions (other than a matching contribution) can be adopted by due date of employer's tax return with extensions

Considerations

- Provides some flexibility in plan design

Plan years after 12/31/23

Defined contribution (DC) plans

Drivers of DC plan success

Collaboration between plan sponsor, investment manager, actuary, recordkeeper, and other providers is essential to retirement readiness – SECURE 2.0 addresses the following areas:

Participation rate

Are employees participating in the plan?

- Auto-enroll
- Re-enrollment
- Company match
- Access to funds
- Driven by plan design, education and engagement

Savings rate

Are participants saving enough?

- Auto-enroll
- Auto-escalation
- Re-enrollment
- Company match
- Access to funds
- Driven by plan design, education and engagement

Investment strategy

Are there robust paths to accumulate sufficient wealth for retirement

- Qualified default investment alternative (QDIA) that fits the needs of the participant population
- Investment menu designed to appeal to varied participant types (varying levels of interest)
- Investment menu designed to serve varied participant needs (varying risk profiles)

Mandatory consideration – part-time employees

Long term part-time employees (Section 125)

- Updates current rules – DC plans must allow deferrals for part-time employees after two (rather than three) consecutive 12-month periods with at least 500 hours of service (and 21 years of age)
  - Employee with 500 hours in 2023 and 2024 eligible in 2025
- Vesting: 500 hours in 12-month period = one year beginning January 1, 2023
- When determining eligibility/vesting under SECURE 1.0 (i.e., 500 hours in three consecutive years), pre-2021 service not counted
- Rules extended to 403(b) plans that are subject to ERISA

Considerations

- Coordination with payroll and recordkeeping to monitor eligibility
- Long term, part-time employees with three years under SECURE 1.0 become eligible on 1/1/2024
- Plans should perform periodic compliance reviews
- While this rule requires eligibility to defer into the plan, will employer contributions also be considered?

2025

Promoting savings – auto-enrollment and catch-up

Expanding automatic enrollment (Section 101)

- Most 401(k) and 403(b) plans established after December 29, 2022, will be required to include automatic enrollment and automatic escalation features
- Initial deferral rate between 3% and 10%, with automatic increases of 1% each year until the rate reaches 10%, not to exceed 15%
- Exceptions include small businesses with 10 or fewer employees, new employers in existence for less than 3 years and church and governmental plans

Considerations

- Plans established now through 2025 may consider complying with these provisions on startup
- Notice requirements will apply for automatic enrollment and qualified default investment alternative (QDIA)
- Additional planning may be needed for corporate transactions, particularly for newly established plans due to spin-off transactions

Higher catch-up contribution limits (Section 109)

- For individuals who have attained ages 60 through 63, the annual catch-up contribution limit is increased to the greater of $10,000 or 150% of the "regular" catch-up amount
- If the higher limits were to apply now, the 150% portion of the limit would apply ($11,250 greater than $10,000)

Considerations

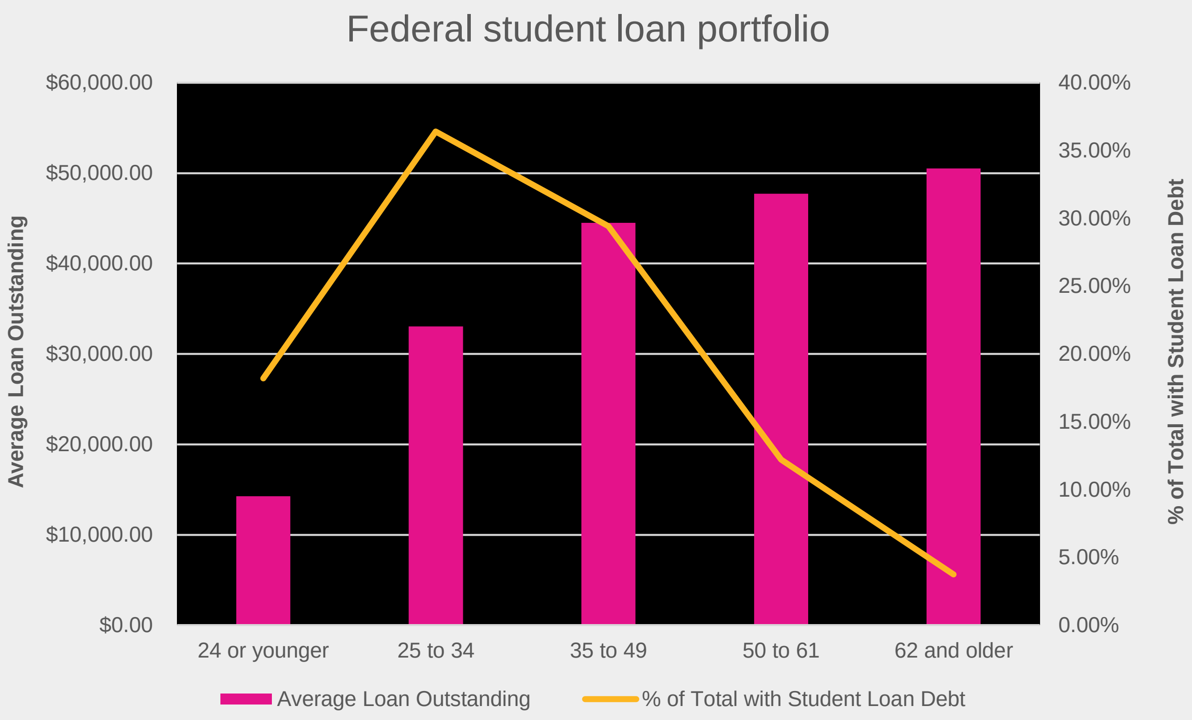
- Payroll changes and potential changes in recordkeeping depending on the current catch up specifications in the plan
- May increase match cost if current formula includes catch up contributions

2025

Employer match on student loan payments

Federal Reserve average student loan debt – among class of 2020, 55% of bachelor's degree recipients took out student loans, graduating with an average of $28,400 in federal and private debt

Loan outstanding amount	Average loan amount	% of total borrowers with student loan debt
< $5000	$2,790.32	15.38%
$5K - $10K	$7,348.48	16.38%
$10K - $20K	$14,457.83	20.60%
$20K - $40K	$28,333.33	22.33%
$40K - $60K	$49,025.64	9.68%
$60K - $80K	$68,636.36	5.46%
$80K - $100K	$85,583.33	2.98%
$100K - $200K	$138,380.95	5.21%
$200K+	$306,750.00	1.99%



Source: Federal Student Aid

Promoting savings – student loan repayments

Employer matching contributions on student loan payments (Section 110)

- Permits employers to make matching contributions under a DC plan or a SIMPLE IRA on “qualified student loan repayments”
- “Qualified student loan repayments” are payments made by an employee in repayment of a qualified education loan incurred by the employee to pay qualified higher education expenses
- Match rate and vesting schedule must be same as match on regular deferrals

Considerations

- Must monitor student loan payments and aggregate with elective deferrals made by the employee during the plan year to comply with 402(g) and 415(c) limits
- Employee must certify annually if they are making student loan payments and employer may rely on the certification
- These matching contributions can differ in frequency, but not less than annually
- Special rules apply for annual ADP testing; can satisfy safe harbor rules if desired
- Communication on acceptable higher education expenses and operational protocol

2024

Encouraging Roth contributions

Optional treatment of employer contributions as Roth (Section 604)

- Plan sponsors may provide employees with the option of receiving their matching or nonelective contributions on a Roth basis
- Contributions must be 100% vested

Considerations

- Contributions will be included in the participant's income in the year contributed
- Implications with payroll and recordkeeping administration as this would be considered taxable income to employees
- Will require guidance from the IRS, especially regarding reporting for income and employment tax purposes
- Will also require enhanced participant education

Date of enactment

Mandated Roth treatment for catch-up contributions (Section 603)

- For plans that allow catch-up contributions, participants with social security wages of $145,000 or more in the prior year can make catch-up contributions only on a Roth basis

Considerations

- Plans not required to allow catch-up contributions at all, but if they do, must require Roth basis for these high earners
- Plans without a Roth feature will require payroll and recordkeeping changes to continue allowing catch-up contributions
- This requires tracking of additional employee classifications
- Will require comprehensive updates to participant education and communication channels

2024

Potpourri – SECURE Act 2.0 sections concerning distributions

331

Federal disaster distribution of up to $22,000 within 180 days after the disaster; 10% tax penalty on early distributions waived; may repay within three years; may also permit loan of up to $100,000; for disasters occurring after January 26, 2021

115

Emergency expense withdrawals of up to $1,000 for certain emergencies; only one withdrawal annually; no further withdrawal within three years unless repaid; 10% tax penalty on early withdrawals waived; effective after December 31, 2023

326

Terminal illness withdrawals permitted if certified by physician as having an illness or physical condition reasonably expected to result in death within 84 months; can be repaid within three years; 10% tax penalty for early distributions waived; effective after December 29, 2022

127

Emergency savings account in DC plan for non-highly compensated employees; must be designated Roth contributions and limited to $2,500 (indexed) annually; may include an auto-enroll feature and match; first four withdrawals in a year are not subject to plan fees; effective beginning in 2024

334

Up to $2,500 (indexed) annual withdrawal for payment of qualified long-term care insurance or qualifying coverage of chronic illness or long-term care services; 10% tax penalty on early withdrawals waived; effective December 30, 2025

314

Domestic abuse withdrawals of the lesser of $10,000 or 50% of the vested account balance; self-certification they experienced domestic abuse; 10% tax penalty on early withdrawals waived; effective for withdrawals made after December 31, 2023

Potpourri – other SECURE Act 2.0 sections

311

Limit on repayment of birth or adopted child withdrawal to any time during the three-year period following receipt of the distribution; effective after December 29, 2022

120

Plan sponsor can hire an automatic portability provider to allow for the rollover of a participant's default IRA (i.e., a previous employer's automatic rollover IRA) into the plan sponsor's plan; effective December 29, 2023

602

403(b) plans (as with 401(k) plans) can now allow hardship distributions from a participant's entire salary deferral, QNEC, and QMAC accounts (including earnings); taking a loan not required prior to receiving a hardship distribution; effective after December 31, 2023

103

Federally funded matching contribution ("Saver's Match") contributed directly to plan of employee's choice; maximum match is 50% of employee's contributions up to $2,000; phases out based on income; effective after December 31, 2026

113

Sponsors of 401(k) plans and 403(b) plans may offer de minimis financial incentives, such as low-dollar gift cards, to boost employee participation in the plans; plan assets may not be used; effective for plan years beginning after December 29, 2022

Defined benefit (DB) plans

DB plan provisions

Termination of variable rate indexing (Section 349)

- No more indexing of PBGC variable rate premiums so that automatic increases cease after 2023. Per participant cap will still be indexed.
- $52 per $1,000 of unfunded vested benefits

Considerations

- Revise projection of plan expenses based on the new rule

Retiree health in pension plans (Section 606)

- Extends the deadline to transfer assets from an overfunded pension plan to pay retiree health or life insurance benefits to 12/31/2032
- Allows de minimis transfers – up to 1.75% of plan assets if the plan is 110% funded (if not collectively-bargained)

Considerations

- Eligible plans have additional time to evaluate and implement this opportunity

Cash balance (hybrid plans) (Section 348)

- Affects how CB plans demonstrate compliance with backloading rules
- Requires CB plans that provide variable interest crediting rates to test for backloading by using a reasonable assumption to project interest crediting rates, subject to a maximum of 6%

Considerations

- CB plans should consider this change with the plan actuary to determine the impact of the new rule and to assess whether plan benefits could be redesigned based on the new rule

Date of enactment

2023

DB plan provisions (cont’d)

Mortality table updates (Section 335)

- Mortality improvement rates used for minimum funding will not assume, for years after the valuation date, future mortality improvements at any age which are greater than 0.78%

Considerations

- Assess with plan actuary and determine if minimum funding requirement is affected
- Impact on mortality tables used to calculate lump sums (currently based on same tables used for funding) TBD

Valuation dates after 2023

Annual funding notices (Section 343)

- Annual funding notices for defined benefit plans need to include additional information, e.g., rate of return on plan assets, plan assets and liabilities, plan funded status and participant counts for the prior two years; assumptions used for funding status differ from those used by PBGC for determining guaranteed benefits

Considerations

- Assess requirements and update AFN accordingly

2024

Lump sum window notices (Section 342)

- Plans offering a LS window must provide notice to participants not later than 90 days before the election window opens
- Must also provide notice/report to DOL and PBGC 30 days prior to the window and 90 days after the window
- Regulations issued by no earlier than 12/29/23

Considerations

- Determine notice requirements well in advance of the LS window offering
- Prepare and deliver notices as appropriate

As per final regs

Administrative simplification

Correction of plan failures

Employee Plans Compliance Resolution System Program (Section 305)

- EPCRS expanded to cover correction of additional types of errors (including inadvertent and plan loan) through self-correction
- Does not apply if:
  - an error is identified on audit, and there is no prior action taken to correct the error
  - the correction is not completed within a reasonable period after discovery
  - the error is egregious, or it relates to the diversion or misuse of plan assets

Considerations

- Greater incentive to monitor the plan and timely correct errors
- Less expensive to fix under EPCRS than on audit
- Will need more detail on the scope of inadvertent errors

Recovery of plan overpayments (Section 301)

- Plan fiduciaries have discretion as to whether to seek recoupment of inadvertent overpayments
- DC plans need to restore impermissible forfeitures
- Does not relieve a DB plan sponsor from satisfying a plan's minimum funding requirements
- Limitations on recoupment through reductions in future benefits
- No recoupment is permitted:
  - for past overpayments to a participant from the beneficiary
  - if the first overpayment occurred more than three years before notice of error was given

Considerations

- Review current recoupment policies
- Review any ongoing recoupment efforts – any retroactive relief?
- Is this time for an administrative compliance review?

Date of enactment

Potpourri

312	Employers can rely on participants' certification that deemed hardship distribution requirements are met. Plan years beginning after December 29, 2022
350	Codifies EPCRS safe harbor (exp. 12/31/23) – limits correction of auto-enrollment/escalation errors if fixed within 9 1/2 mos. of earlier of end of plan year or participant notification. Effective January 1, 2024
338	Periodic paper statements are required– DC plans annually, DB plans every 3 years. Plan years beginning after December 31, 2025
320	Unenrolled participants do not need to receive participant notices but must receive a reminder of eligibility to participate annually. Plan years beginning after December 31, 2022
339	Recognition of tribal government domestic relations orders provides parity with state courts. Orders received after December 31, 2022
303	Retirement savings lost and found – the DOL is charged with developing a national online searchable lost and found database by no later than December 29, 2024
324	Treasury Secretary must issue sample forms for rollovers by no later than January 1, 2025
341	Secretaries of Labor and Treasury must adopt regulations allowing plans to consolidate required notices, including QDIA, 401(k) safe harbor, auto-contributions, by no later than December 29, 2024

Potpourri (cont'd)

102 Increase in tax credit for pension plan start-up costs for employers with up to 100 employees. Taxable years after December 31, 2022

121 Creates two "starter" 401(k) plan designs for employers with no retirement plan. Plan years beginning after December 31, 2023

345 Form 5500 filed for group of plans with common features only requires audits for plans with >100 participants. Effective December 29, 2022

106 SECURE 1.0 permits unrelated employers to participate in a pooled multiple employer plan. SECURE 2.0 extends this to 403(b) plans. Plan years beginning after December 31, 2022

306 457(b) plan first day of month requirement is eliminated. Taxable years beginning after December 29, 2022

114 Expansion of deferral of gain on sale of stock in an S-corporation to an ESOP. Effective for sales of stock after December 31, 2027

123 Certain securities not traded on an exchange can be treated as publicly-traded in an ESOP. Plan years after December 31, 2027

Questions

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