

SECURE 2.0 Act of 2022: Year-End Spending Bill Overhauls Qualified Retirement Plan Rules

On December 29, 2022, President Biden signed into law the Consolidated Appropriations Act of 2023, which includes the SECURE 2.0 Act of 2022 (SECURE 2.0 or the Act), building upon 2019's expansive Setting Every Community Up for Retirement Enhancement Act (the SECURE Act). While most of these changes take effect in upcoming years, some changes became effective on the date of enactment, December 29, 2022, and others on the first day of a plan year beginning on or after January 1, 2023.

SECURE 2.0 includes provisions that modernize the retirement system by encouraging additional retirement savings, ensuring greater access to workplace retirement plans and easing administrative requirements.

Plans have until the end of the 2025 plan year (2027 for governmental and collectively bargained plans) to adopt plan amendments required under SECURE 2.0. However, plans must comply operationally with the provisions by the effective dates specified in the Act.

This alert summarizes some key provisions of the SECURE 2.0 Act affecting all qualified retirement plans. Plan sponsors of defined contribution plans and defined benefit plans should look for our separate alerts on key provisions impacting those plans.

Increased Age for RMDs. The SECURE Act previously increased the age at which participants are generally required to begin taking distribution from their retirement plans from age 70-1/2 to age 72. The Act further increases the required minimum distribution (RMD) age to 73 for individuals who did not attain age 72 prior to January 1, 2023, and will not attain age 73 until after December 31, 2032. Further, SECURE 2.0 includes a subsequent increase to age 75 for any individual who did not attain age 74 prior to January 1, 2034. These increases also apply to surviving spouse distributions.

As with the change under the SECURE Act, the increase in RMD age is not required, provided the plan requires distributions commence prior to the date required under SECURE 2.0.

Note that for individuals born in 1959, both the RMD age 73 (as these individuals will

POSTED:

Jan 5, 2023

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attain age 73 prior to January 1, 2033) and the RMD age 75 apply (as these individuals will not attain age 74 prior to January 1, 2033). We expect a technical correction will be released to clarify the applicable RMD age for this group of individuals.

Surviving Spouse Election Treated as Employee. Effective January 1, 2024, a plan may permit a surviving spouse to irrevocably elect to be treated as the employee for RMD purposes.

Reduced Excise Tax for Late RMDs. The Act reduces the excise tax penalty for failing to take RMDs from 50 percent to 25 percent. In addition, if the failure is corrected during a two-year correction window, the excise tax is further reduced to 10 percent. This change is effective for taxable years beginning after December 29, 2022.

Increased Involuntary Distribution Limit. The Act increases the amount plan sponsors may distribute from a participant's retirement account into an IRA from \$5,000 to \$7,000. This increase is effective for distributions after December 31, 2023.

Early Distribution Penalty Exception for Individuals with a Terminal Illness. The Act creates an exception to the early withdrawal penalty for participants certified by a physician as being terminally ill. This exception is effective for distributions made after December 29, 2022.

Recovery of Retirement Plan Overpayments. The Act allows retirement plan fiduciaries the latitude to decide not to recoup overpayments mistakenly made to retirees. SECURE 2.0 provides fiduciary relief for failure to make the plan whole, provided all minimum funding requirements are met and any impermissible forfeitures are restored. Further, the Act significantly restricts a plan sponsor's ability to recoup inadvertent overpayments by limiting recoupment efforts to a three-year period, eliminating the ability to charge interest on any overpayment, limiting the maximum offset to 10 percent of the full overpayment and forbidding plan sponsors from threatening litigation without a reasonable plan fiduciary's determination that there is reasonable likelihood of success to recover an amount that exceeds an overpayment. If an ERISA-covered plan elects to offset future plan payments to recover an overpayment, restrictions will be imposed on the offset. These changes are effective December 29, 2022, with certain retroactive relief for prior good faith interpretations of existing guidance.

Given the amount of discretion now available, plan sponsors should consider adopting an overpayment policy, or amending an existing policy, to create a non-discriminatory



approach to recoupment of overpayments. Additionally, plan sponsors should confirm that any current overpayment recoupment practices are not in violation of SECURE 2.0.

Expansion of Employee Plans Compliance Resolution System (EPCRS). The act directs the IRS to expand EPCRS to allow more types of errors to be corrected internally through self-correction, including significant errors that were not timely discovered and exempt certain failures to make required minimum distributions from the otherwise applicable excise tax. For example, this expansion allows for correction of many plan loan errors through self-correction.

Elimination of Plan Notice Requirements Related to Unenrolled Participants. The Act permits plan sponsors to exclude unenrolled plan participants from receiving certain intermittent plan notices. However, plan sponsors are required to send (1) an annual reminder notice of the participant's eligibility to participate in the plan and any applicable election deadlines; and (2) any otherwise required document requested at any time by the eligible individual. This provision is effective for plan years beginning on or after January 1, 2023.

Requirement to Provide Paper Statements. The Act amends ERISA to require defined contribution plans to provide a paper benefit statement at least once annually unless a participant makes an alternative election. For defined benefit plans, this requirement is extended to once every three years. These requirements become effective for plan years beginning on or after January 1, 2026.

Creation of Retirement Savings Lost and Found. SECURE 2.0 requires the DOL to create a searchable database with information regarding retirement benefits owed to missing participants by December 29, 2024. Plan sponsors will be required to submit certain information for the database, including participant names and social security numbers; identifying plan information; and information addressing any former plan or employer names, mergers or consolidations.

Unfortunately, SECURE 2.0 does not seem to address plan sponsor concerns regarding locating missing participants through the lost and found database. However, the burden of compiling information needed for participants to locate missing benefits is placed on plan sponsors. Plan sponsors should review its records and begin compiling information as necessary in preparation for the launch of the database.

Recognition of Tribal Government Domestic Relations Orders. The Act adds tribal government courts to the list of courts authorized to issue qualified domestic



relations orders under federal law. This addition is effective for domestic relations orders received by plan administrators after December 31, 2022, including any such order submitted for reconsideration.

Plan sponsors should review and revise as necessary any policies or procedures in place addressing domestic relations orders to ensure recognition of orders issued by tribal governments.

If you have any questions about SECURE 2.0 or the Consolidated Appropriations Act of 2023 and the potential impact these legal changes could have on your benefit plans, please contact your Reinhart benefits attorney.

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