



President Biden Signs SECURE 2.0 Legislation as Part of Spending Legislation

On December 29, 2022, President Biden signed into law the more than 4,000-page spending bill. In addition to funding the government to September, the legislation included provisions of what has been called SECURE 2.0. The SECURE 2.0 package is full of popular reforms that have been supported by the financial services industry and backed by a rare bipartisan consensus. Aimed at increasing retirement savings and expanding availability and participation in employer sponsored retirement plans, Secure 2.0 contained over 100 provisions. Following are several of the provisions we believe financial professionals and their clients will be interested in:

Provisions to Increase Savings
<ul style="list-style-type: none"> Allows individuals to save for retirement longer by increasing the RMD age from 72 to 73 starting 1/1/23 and to 75 starting 1/1/33. Effective after 12/31/23.
<ul style="list-style-type: none"> Provides indexing of the current \$1,000 IRA catch-up contribution for those age 50 and older. Effective after 12/31/22.
<ul style="list-style-type: none"> Increases annual catch-up limits for employer plans to \$10,000 for individuals ages 60, 61, 62, and 63. Indexed after 2025. Effective after 12/31/24.
<ul style="list-style-type: none"> Allow employees with qualified student loan balances to repay the loan while employed and have the employer contribute a matching contribution to a 401(k), 403(b), SIMPLE IRA, and governmental 457(b) account. Effective for contributions after 12/31/23.
<ul style="list-style-type: none"> Increase contribution limits for SIMPLE plans. Also allows employers to make additional nonelective contributions to each employee of a plan in a uniform manner provided they do not exceed lesser of 10% of compensation or \$5,000 (indexed). Effective after 12/31/23.
<ul style="list-style-type: none"> Permits tax and penalty free rollover from any 529 account in taxpayer’s name to their Roth IRA under certain conditions. The rollover is capped at \$35,000 over the taxpayer’s lifetime, are subject to the Roth IRA annual contribution limits and the 529 plan must have been open for more than 15 years. Effective for distributions after 12/31/23.
<ul style="list-style-type: none"> Establishes pension-linked emergency savings Roth-like accounts for non-highly compensated employees. Employee contributions are capped at \$2,500 (or lower as set by employer) and are treated as elective deferrals for purposes of retirement matching contributions with matching maximum cap set at \$2,500. At separation from service the employee can take this emergency savings account as cash or roll it into Roth. Effective after 12/31/23.
<ul style="list-style-type: none"> Saver’s credit is replaced with Saver’s match with respect to IRA and retirement plan contributions. The federal match must be paid into a taxpayer’s IRA or retirement plan and is 50% of the contribution up to \$2,000 per individual. The match is phased out for incomes between \$20,500 -35,000 for single taxpayers (\$41,000-71,000 joint). Effective after 12/31/26.
<ul style="list-style-type: none"> Designated Roth accounts in 401(k), 403(b) and 457(b) plans no longer have a lifetime RMD requirement, effective for distributions required for 2024 and later years. (It does not apply for 2023 distributions that have to be taken by 4/1/24 for the 2023 year.) This change makes them more comparable to Roth IRAs, which also do not require minimum distributions during the lifetime of the owner.



Provisions to Increase Availability/Participation

- Requires 401(k) and 403(b) plans to **automatically enroll** participants once they become eligible. There is an exception for small businesses with 10 or fewer employees and businesses that have been in business for less than 3-years. Effective for plan years beginning after 12/31/24.
- To encourage participation employers are allowed to offer employees small, immediate, incentives (gift card) for making retirement plan contributions. Effective after date of enactment.
- **Improves coverage for part-time workers** in 401(k) and 403(b) plans covered by ERISA by reducing the period of service requirement from three years of 500 hours to two years of 500 hours. Effective for plan years beginning after 12/31/24.
- Offers small employers with respect to their defined contribution plan a new tax credit if they **make it easier for military spouses to save for retirement**. Effective after date of enactment.
- **Increases tax credit for small employers** to cover new retirement plan start-up costs. Effective after 12/31/22. Also ensures a startup tax credit for 3-years is available for small employer plans for employers joining a MEP regardless of how long the MEP has been in existence. Effective retroactively for years beginning after 12/31/19.
- **Permits not-for-profit employers to participate in MEP** to gain more favorable investment result and reduced costs as well as provide relief from the one bad apple rule. Effective for plan years beginning after 12/31/22.
- Permit employers with no retirement plan to offer a starter **401(k) (or safe harbor 403(b))**. The annual deferral limits would be the same as IRA contributions limits. Effective after 12/31/23.

Provisions to Preserve Income

- **Removes RMD barriers to certain life annuities** in qualified plans/IRAs that are the results of existing regulations. The actuarial test prohibited many guarantees that provided modest benefit increases such as annual increases up to 5%. Effective after date of enactment.
- **Eliminates penalty on partial annuitization** by permitting a plan participant to aggregate distributions from the annuity and fund portion for purposes of determining RMD. Effective on date of enactment.
- Addresses a barrier to growth of **Qualified Longevity Annuity Contracts (QLACs)** in IRAs/define contribution by **repealing the 25% limit** for contracts purchased or received in an exchange and **increases the dollar limit to \$200,000 (indexed)**. Also facilitates the sale of QLACS with spousal survivor rights. Effective for contracts purchased or exchanged after the date of enactment.
- **Eliminates pre-death distribution requirement of Roth Accounts**. Effective after 12/31/23.

Other Provisions

- Permits penalty-free distributions of up to \$2,500 per year from retirement plan for the **payment of premiums for certain "high quality" long-term care insurance contracts**. Effective 3 years after date of enactment.
- **Reduces RMD excise tax from 50% to 25%** for individuals who take a distribution from a retirement plan that is less than required. This can be reduced to 10% if corrected within 2 years. Effective after 12/31/22.
- **Surviving spouse given option to elect to be treated as the deceased employee for purposes of RMD**. Effective after 12/31/23.



- **Increases charitable donations** by indexing the \$100,000 charitable IRA distribution and permitting an individual to make a one-time charitable donation up to \$50,000 to a CRT, or charitable gift annuity. Also modifies RMD rules for special needs trusts so that the trust can have a charitable organization as remainder beneficiary. Effective after date of enactment.
- Expands ability to defer 10% of the long-term capital gain tax for certain **sales of employer stock to ESOP to plans sponsored by an S corporation** under IRC Section 1042. Effective for sales made after 12/31/27.
- Distributions up to \$10,000 (OR 50% of account balance if less) for participants who experience **domestic abuse would not be subject to 10% penalty**. Participants can repay over 3-years and get refund of income tax on money repaid. Also eliminates the 10% penalty for **distributions to terminally ill individuals**. Effective after 12/31/23.
- **Corrective distributions on excess contributions** and earnings not subject to 10% penalty. Effective for any determination of, or affecting liability for taxes, interest or penalties which is made on or after date of enactment.
- **Penalty free withdrawals up to \$1,000** during a 3-year period for **personal & family unforeseen emergency expenses**. Option to repay within 3-years. Effective after 12/31/23.
- Permits penalty free distributions from employer plans or IRA of up to \$22,000 in connection with **qualified federally declared disasters** with income spread over 3-years or recontributed to retirement account. Also, an employer is permitted to provide larger amount to be borrowed from plan and additional time for repayment of plan loans. For disasters occurring after 1/26/21.
- Extends exemption from the 10% early distribution penalty that applies to public safety officers who reach 50 to those who have 25-years of service. It also extends this 10% penalty exemption to private-sector firefighters and correction officers who are employees of state and local governments. Effective after date of enactment.
- Mandates the creation of a national online searchable retirement savings **lost and found database**. No later than 2-years from date of enactment.
- Requires Treasury to **simplify and standardize rollover process** by issuing sample forms for direct rollovers by 1/1/25.
- Repayment of qualified birth or adoption distributions limited to 3-years. Effective for distributions made after date of enactment and retroactively for the 3-year period beginning on the day after the date of which such distribution was received.
- Employer allowed to replace SIMPLE accounts with safe harbor 401(k). Effective after 12/31/23.

Revenue Raisers

- **All catch-up contributions to qualified retirement plans are required to be Roth** except employees with compensation of \$145,000 (index) or less. Effective after 12/31/23.
- Allows participants of 401(k), 403(b), and governmental 457(b) plans to elect to receive **employer matching contributions and other employer contributions as Roths, to extent vested**. Effective for contributions after date of enactment.
- All plans that accept pre-tax employee contributions can **accept Roth** contributions from participants and employers. Effective for contributions after 12/31/22.
- Conforms 403(b) hardship distribution to 401(k) hardship rules. Effective after 12/31/23.

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