Special Edition: SECURE 2.0 Brings Expansive Changes to Retirement Programs

Congress brought holiday cheer to savers, small business owners and retirement plan sponsors to wrap up 2022. Bipartisan legislation moved ahead in the final days of the 117th Congressional session as SECURE 2.0 was incorporated into a $1.7 trillion-dollar omnibus spending bill that includes nearly 100 different provisions impacting retirement.

Here's What You Really Need to Know:

1. The provisions of SECURE 2.0 have a variety of effective dates. Like the SECURE Act of 2019, some provisions will become effective as of the enactment date and other provisions will become effective for 2023, 2024 and beyond.
2. The provisions of SECURE 2.0 are not all required, as some are permissive, and it will be up to the retirement plan sponsor (with guidance from legal counsel and retirement plan service providers) to determine which provisions are required (e.g., eligibility change for long-term, part-time employees) and which provisions are optional to implement based on the settlor/plan sponsor's judgment (e.g., student loan matching provision).
3. Under SECURE 2.0, so long as the plan operates in accordance with the amendments based on the effective date in the legislation, the actual plan amendments will not be required until the last day of the first plan year beginning on or after January 1, 2025 (or 2027 for governmental plans). And, given all of the recent changes, SECURE 2.0 also conforms and extends the plan amendment dates under the SECURE Act of 2019, the CARES Act and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 to these same dates (instead of 2022 and 2025).

Let's Dive In...

Legislative Background

This legislation has been coined by the financial services industry as SECURE 2.0, which was the nickname for the culmination of three different bills until Congress reconciled the three bills and included the SECURE 2.0 Act of 2022 as Division T of the "Consolidated Appropriations Act, 2023." The three primary bills that formed SECURE 2.0 include:

- March 2022: House passed the Securing a Strong Retirement Act.

- June 2022: Retirement Improvement and Savings Enhancement to Supplement Health Improvements for the Nest Egg Act (RISE & SHINE Act) introduced in the Senate and reported to the Committee on Health, Education, Labor, and Pensions (Senate HELP Committee).
- September 2022: Enhancing American Retirement Now Act (EARN Act) introduced in the Senate.

SECURE 2.0 builds off the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act of 2019), signed into law on December 20, 2019. It contained nearly 30 provisions that impacted individuals and employers' institutional retirement plans and had two primary purposes: (1) expand coverage for those without access to a plan and (2) address longevity for Americans who are living longer and need savings throughout the later years of life.

Since the SECURE Act of 2019's passage, regulatory agencies have issued clarifying guidance impacting plan sponsors and their participants. Additional legislation and guidance were issued during the COVID-19 crisis as a result of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Although the CARES Act and the COVID-19 crisis derailed the spirit and proactive attention for many of the permissive provisions of the SECURE Act of 2019 (e.g., provisions to start new plans, safe harbor for guaranteed lifetime income solutions, etc.), SECURE 2.0 is another opportunity to carry forward many of the same themes from the past several years of regulatory and legislative initiatives.

Major Provisions of SECURE 2.0

When the SECURE Act of 2019 passed it was the most sweeping piece of legislation impacting retirement plans in over a decade. Now, just a few years later, SECURE 2.0 paves the way for substantially more impactful and expansive provisions than its predecessor. The major provisions of the bill might be broken into these categories based on their purpose:

1. Expanding coverage
2. Flexibility for savers in qualified plans
3. Ease of administration for plan sponsors
4. Addressing longevity

There is also a group of provisions that impact individual retirement savers and their retirement-planning strategy including several changes to Roth and Required Minimum Distributions. For retirement plan sponsors, some of these provisions may indirectly impact the technical requirements for the retirement plan but have a substantial impact on plan participants. Finally, there is a group of provisions that uniquely impact plan types beyond 401(k) plans and in some instances, bring 403(b) plans more in line with 401(k) plans.

This summary provides a high-level overview of the major provisions in each category, but retirement plan sponsors, their participants and service providers should understand that this is far from exhaustive in nature and additional information will become available in the coming weeks.

Expanding Coverage

One of the biggest themes from SECURE 2.0 is expanding coverage, as several provisions seek to encourage small businesses to start a retirement plan and encourage savings once in the plan, building on the provisions from SECURE Act of 2019. Among these provisions targeting expanded coverage:

- **Establishment of the Starter-K plan,** which would permit employers who do not currently sponsor a retirement plan to offer a "starter" 401(k) plan or 403(b) plan. Employers would not be required to contribute and their employees would be automatically enrolled at 3% of pay. The limits start at $6,000, indexed to inflation. There is an additional opportunity for a catch-up contribution of $1,000 for those individuals over 50 years old.
- **Credit for Small Employer Start-up Costs,** which would increase the credit to 100% (up from 50%) of qualified start-up costs for employers who start a retirement plan. Small employers are those with up to 50 employees.
- **Automatic Enrollment Provision,** which adds an automatic enrollment and automatic escalation requirement for plans starting at 3% and increasing to 10% (at a rate of 1% per year). Existing plans are grandfathered in, and there is a carve-out for small employers with 10 or fewer employees.

Flexibility for Savers in Qualified Plans

Several provisions build on both the SECURE Act of 2019 and CARES Act by allowing flexibility for participants to take money out of the plan and potentially later repay the plan, as well as greater opportunities to save within a plan, including:

- **Student Loan Repayment Program** that builds on the Internal Revenue Service (IRS) Private Letter Ruling from 2018. This provision allows plan sponsors to make a matching contribution on behalf of participants in the plan who are making student loan payments so long as eligibility, vesting and limits still apply.
- **Catch-up Contribution Increases** to $10,000 for those age 60-63 (not the normal over 50), indexed for inflation.
- **Saver's Match,** which was previously the Saver's Credit, becomes a direct matching contribution in 2027 for those lower-income earners who choose to save for retirement in a qualified plan.
- **Emergency Savings Accounts,** which allows a plan sponsor to add a "sidecar account" for emergency saving (and spending) where participants can be automatically enrolled into the account. This account must be funded with after-tax contributions with a limit up to $2,500 for the account.

- **Emergency Expenses Withdrawal,** which builds on CARES Act style of provisions and allows for a penalty-free withdrawal of up to $1,000 for unforeseen emergencies. The withdrawal may be repaid within three years.
- **Withdrawal for Survivors of Domestic Abuse,** whereby participants may take a penalty-free withdrawal of up to $10,000 or 50% of the vested account balance for reasons related to domestic abuse. Participants will self-certify the reasons for taking the withdrawal, and they can repay over a three-year period.

Ease of Administration for Plan Sponsors

Overall, massive changes in retirement plan policy don't make it easier for plan sponsors to administer retirement plans; in fact, massive changes could discourage some employers from offering a plan altogether. However, SECURE 2.0 includes provisions to make it easier to perform the day-to-day functions associated with running a plan including a few of the following:

- **Expansion of the Employee Plans Compliance Resolution System (EPCRS),** which is the program through the IRS that allows plan sponsors to fix compliance problems such as errors related to automatic enrollment and loan administration.
- **Initiation of a Federal Lost and Found Program,** which directs the DOL to create an online program for missing participant balances.
- **Increase for Small Sum Distributions,** which allows plan sponsors to distribute terminated participants' balances up to $7,000 (instead of $5,000) to an individual retirement account (IRA).

For those employers who don't want all the burden of running a plan themselves, SECURE 2.0 also includes provisions for pooled employer plans (or PEPs) and group of plans (or GoPs) to build on SECURE Act of 2019 and encourage employers to shift responsibility (and liability) for plan administration to a third party through a pooled approach.

Addressing Longevity

While longevity was a major initiative of the SECURE Act of 2019, it did not get as much real estate in SECURE 2.0. However, Congress didn't want to lose sight of this initiative and dedicated the entire Title II of SECURE 2.0 to "Preservation of Income." One provision changed the current limits for qualified longevity annuity contracts (or QLACs, for short).

Additional Provisions

While there are several provisions not covered in this update (for example, the changes to required minimum distributions), one of the bigger surprises for some may be the provision for 529 plans. If certain conditions are met, there is a penalty-free way to roll over assets from a 529 plan to a Roth IRA in the beneficiary's name. This provision is subject to annual Roth contribution limits and an aggregate lifetime limit of $35,000 (as well as other requirements).

To offset many of these benefits, Congress must include “revenue raisers.” One such provision is that all catch-up contributions will be considered Roth for taxable years after December 31, 2023. This provision does not apply to individuals making $145,000 or less income the previous year, indexed for inflation.

Action Items for Plan Sponsors

The changes in SECURE 2.0 are considerable and it will take several days (and months) to understand all the nuisances of this legislation while still making updates from SECURE Act of 2019 and the CARES Act. As is the case with this type of legislative package, there will be regulatory guidance and technical updates forthcoming, but in the interim, plan sponsors should consider the following action items:

1. Review the legislation and ask questions of qualified experts, where necessary.
2. Inventory the provisions and understand which provisions impact your plan(s).
3. Of those provisions that are permissive (and not required), determine what provisions the settlor would like to implement.
4. Based on all provisions that impact the plan and its participants, determine the timing of applicable provisions (i.e., some are effective immediately and many are effective in 2023 and beyond). Alongside evaluation of the timing, determine which of these provisions is supplemental versus a repeal-and-replace approach of an existing SECURE Act of 2019 provision. This will help to formulate the plan’s roadmap for implementation and compliance.
5. Work with the plan’s service providers to understand how they will handle plan amendments for the provisions impacting the plan.
6. Monitor for regulatory guidance and technical assistance from the IRS, DOL and other regulatory bodies related to these provisions.

And stay tuned for additional updates that will be forthcoming in early 2023 and throughout the year.