The Compass: Provisions of SECURE 2.0 Focused on Creating Flexibility for Savers

SECURE 2.0 was enacted on December 29, 2022. With nearly 100 provisions, SECURE 2.0 can feel overwhelming—making it helpful to break down this complex legislation into more manageable categories. In this series of updates, along with our Complete Guide to SECURE 2.0, we break SECURE 2.0 into six categories and discuss each category in turn. This update will dive into provisions that relate to giving savers flexibility to access their money in qualified plans.

Here's What You Really Need to Know:

1. SECURE 2.0 includes both required and optional provisions for plans. The provisions that create flexibility for savers are largely permissive, which means that employers can put on their settlor hat (don't forget, that's when sponsors aren't acting as a fiduciary to the plan but rather are making business decisions) and decide if they want to implement these plan provisions or not. Once the settlor decision is made, the plan's fiduciaries can execute those decisions.

2. Self-certification became more prevalent in recent years with the SECURE Act of 2019 and CARES Act. Self-certification is carried through in many of the provisions of SECURE 2.0. For example, self-certification means that the plan sponsor does not have to collect documentary evidence from the participant but can rely on the participant's assertion that the participant had a domestic abuse event, within the last year, which qualifies for the penalty-free withdrawal of up to $10,000.

3. Provisions relating to flexibility for savers require a balancing of objectives. Some of the provisions may feel like Congress is creating too many avenues for employees to access their savings. Simultaneously, employees sometimes avoid saving for retirement because they are afraid they won't be able to access their money once it is in the retirement plan. This is the push-pull that SECURE 2.0, alongside employers and plan fiduciaries implementing SECURE 2.0, will try to navigate.

Let's Dive In...

Studies show that many Americans do not have the savings to cover basic emergencies. To combat these concerns, there are provisions in SECURE 2.0 that build off many of the themes from the SECURE Act of 2019, introducing ways for participants to save in a qualified retirement plan while still allowing access to their funds if needed.

Emergency Saving Provisions: Two provisions under SECURE 2.0 relate to emergency savings and should not be confused.

- First, there is a provision that allows for withdrawals for certain emergency expenses. **Section 115** provides an exception from the additional 10% tax on early distributions for those self-certified unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses. This provision allows one distribution per year, up to $1,000. The participant has the option to repay the distribution within 3 years. No further emergency distributions are permissible during the 3-year repayment period unless repayment occurs.
- Second, **Section 127** would allow an employer the option to add a provision for non-highly compensated employees (NHCE) to automatically contribute up to 3% of their salary to a side account for emergencies. The contribution is limited to $2,500 total and once reached, the additional contributions can be directed to the employee's Roth-defined contribution plan or stopped until the balance is below the $2,500 cap for the account. Section 127 has raised some controversy: critics have raised concerns about potential employee abuse. But support for this provision has been building in recent years, given the behavioral finance perspective that participants will save more if they know they can access their funds in emergencies.

Notably, both of these are permissive provisions that begin in 2024, so plan sponsors that want to implement these provisions will need to start conversations with payroll and recordkeepers early to determine how realistic these provisions will be to implement.

Early withdrawal provisions: SECURE 2.0 also includes a series of early withdrawal provisions in addition to the emergency savings provision discussed above.

- **Exception for individuals with a terminal illness: Section 326** provides an exception to the 10% penalty in the case of a distribution to a terminally ill individual. The important distinction in this provision is that unlike several of the other provisions that are based on self-certification, this provision requires physician certification.
- **Exception for individuals impacted by domestic abuse: Section 314** creates an exception to the 10% penalty for domestic abuse survivors who self-certify they have experienced domestic abuse. Victims can withdraw the lesser of $10,000, indexed for inflation, or 50% of their account. The withdrawal must be taken within one year of the domestic abuse event. A participant can repay the withdrawn money over three years and will be refunded for income taxes on money that is repaid. This builds off the provisions from the CARES Act and SECURE Act of 2019. This provision is permissive.

Recall QBADs? Established in the SECURE Act of 2019, **Section 311** amends the qualified birth or adoption distribution (aka QBAD) provisions from SECURE Act of 2019 to restrict the recontribution period to 3 years in order to qualify as a rollover contribution. This provision is effective for distributions taken after December 29, 2022, and for pre-enactment distributions, the repayment period ends on December 31, 2025.

Student Loan Matching Provisions: Although permissive, arguably one of the most discussed provisions—building off the Abbott Labs Private Letter Ruling in 2018—is the student loan matching provisions. The provision allows greater flexibility for savers to continue to save while repaying qualified higher education expenses.

Action Items for Plan Sponsors

1. Work with your recordkeeper to understand what the recordkeeper can support operationally.
2. Work with your payroll provider to understand the updates that may be required to the payroll file and integration.
3. Understand which of these provisions will be the most beneficial for your employees and most impactful to attract and retain talent. These provisions are largely permissive, thus plan sponsors will want to evaluate the additional administrative burden some of these provisions may pose against the potential employee benefits.

To learn more about these flexibility provisions, as well as the rest of SECURE 2.0, please review our brandable Complete Guide to SECURE 2.0, available **here**.