SECURE Act 2.0
A LITTLE SOMETHING FOR EVERYONE?

In 2019, we got the Setting Every Community Up for Retirement Enhancement (SECURE) Act; and in 2020 the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Now, with the latest iteration of Securing a Strong Retirement Act of 2021 (H.R. 2954/SECURE Act 2.0) percolating through the House and moving on to the Senate later this summer, the question is—will Congress make it three years in a row for major legislative changes affecting the retirement marketplace?

There is strong bipartisan support for some of the provisions in SECURE Act 2.0—so the odds favor more change—how much is yet unknown. Much hinges on the battle between Congress's goals of reducing the federal deficit (projected to be $3.4 trillion in 2021)[1] and reducing the retirement savings deficit of U.S. workers (estimated to be $4.3 trillion).[2] The following provides a brief overview of the makeup of SECURE Act 2.0.

Overview—What's in SECURE 2.0?

As it currently stands, the SECURE Act 2.0 has 45 retirement-related provisions segmented into four main categories or goals designed to

1. Expand employee coverage,
2. Preserve income for retirees,
3. Simplify/clarify rules for plan sponsors; and
4. Generate revenue.

Expand Employee Coverage

In this section there are 14 provisions pegged to potentially help expand employee access to and coverage by workplace retirement plans, including the following:

- Mandating auto enrollment with auto escalation in 401(k) and 403(b) plans,
- Enhancing the credit for small employer pension plan start-up costs by 1) Increasing the startup credit from 50% to 100% for employers with up to 50 employees, 2) adding a new credit that would be a percentage of the amount contributed by the employer on behalf of employees, up to a per-employee cap of $1,000 (limited to employers with 50 or fewer employees and phased out for employers with between 51 and 100 employees), and 3) clarifying the credit is also available for three years for employers joining a multiple employer pension (MEP), regardless of how long the MEP has been in existence;
- Promoting the Saver's Credit to workers to increase retirement contributions;
- Permitting 403(b) custodial accounts to invest in collective investment trusts (CITs), and treating 403(b) plans like 401(a) plans with respect to their ability to invest in (CITs),
- Increasing catch-up contribution annual limits,
- Increasing the age (again) for taking required minimum distributions (RMDs),
- Allowing 403(b) plans to participate in multiple employer plans (MEPs), including pooled employer plans (PEPs),
- Treating student loan payments as elective deferrals in 401(k), 403(b), gov't 457 or SIMPLE IRA plans for purposes of employer matching contributions;

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[1] Bipartisan Policy Center, Deficit Tracker, May 2021

[2] Employee Benefits Research Institute, 2020

- Giving small employers a tax credit for easing plan eligibility requirements for military spouses;
- Allowing employers to offer small immediate incentives (e.g., gift cards) as an enticement for plan participation;
- Creating a safe harbor for certain corrections of employee elective deferral failures;
- Reducing the period of service requirement for long-term, part-time workers from 3 to 2 years; and
- Fostering employee ownership of S Corporations through employee stock ownership plans(ESOPs).

Provisions that Would Preserve Retiree Income

Three provisions are included in this section, which, if finalized, would

- Remove RMD barriers for life annuities;
- Enhance qualifying longevity annuity contracts; and
- Update regulations for insurance-dedicated exchange-traded funds.

Provisions that Would Simplify/Clarify Certain Plan and IRA Rules

The provisions in this, the largest section of SECURE 2.0, are designed to ease the administrative burdens that plan sponsors and retirement savers face by

- Allowing retirement plan fiduciaries the discretion to not recoup overpayments that were mistakenly made to retirees;
- Reducing the penalty from 50 to 25 percent for failing to take RMDs;
- Modify regulations so that an investment that uses a mix of asset classes (e.g., target date funds) can be benchmarked against a blend of broad-based securities market indices;
- Make recommendations to Congress to consolidate, simplify, standardize and improve plan reporting and disclosure requirements;
- Ceasing the requirement for defined contribution plans to provide certain notices to unenrolled participants;
- Creating a national, online, "lost and found" for U.S. workers' retirement plan assets, managed by the Pension Benefit Guaranty Corporation;
- Expanding the Employee Plans Compliance Resolution System (EPCRS) to 1) allow more types of errors to be corrected internally through self-correction, 2) apply to inadvertent IRA errors, and 3) exempt certain failures to make RMDs from the otherwise applicable excise tax;
- Allowing participants in a governmental 457(b) plan to make deferral elections at any time prior to the date that the compensation being deferred is available rather than the first day of the month before;
- Extending to firefighters the ability to take penalty-free distributions from retirement plans upon termination after attaining age 50;
- Permitting first responders to exclude service-connected disability pension payments from gross income after reaching retirement age;
- Starting the statute of limitations for taxes on prohibited transactions, excess contributions, or RMD failures when the taxpayer files an individual tax return for the year of the violation;
- Expanding the IRA charitable distribution provision to allow for a one-time, $50,000 distribution to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts;
- Providing that with respect to defined contribution plans, unless a participant elects otherwise, a plan is required to provide a paper benefit statement at least once annually;

- Allowing an employer to perform the top-heavy test for a plan separately on the non-excludable and excludable employees;
- Amending the qualified birth or adoption distribution (QBAD) provisions to restrict the recontribution period to three years;
- Allowing plan participants to self-certify that they have had an event that constitutes a hardship for purposes of taking a hardship withdrawal;
- Allowing penalty-free withdrawals from retirement plans for individuals in case of domestic abuse;
- Reforming the family attribution rules related to business ownership;
- Permitting discretionary amendments that increase participants' benefits to be adopted by the due date of the employer's tax return rather than by year end;
- Allowing sole proprietors or single-member LLCs, to make employee contributions up to the date of the employee's tax return filing date for the initial year;
- Distributing and taxing only the portion of an IRA account used in a prohibited transaction (rather than the entire IRA).

Provisions that Would Generate Revenue

The revenue generating provisions resurrect the ghost of "rothification" (i.e., encourage/mandate after-tax contributions vs. pre-tax retirement contributions), which has haunted proposed retirement legislation for several years (since 2014) without coming to life. The changes proposed under SECURE 2.0 would

- Permit savings incentive match plans for employees (SIMPLE) IRAs to accept Roth contributions, and simplified employee pension (SEP) plans to treat employee and employer contributions as Roth contributions (in whole or in part);
- Treat all catch-up contributions to qualified retirement plans as Roth (after-tax) contributions; and
- Allow defined contribution plans to provide participants with the option of receiving matching contributions on a Roth basis.

Plan Amendments

Plan amendments required pursuant to this bill would be due by the end of 2023 (2025 in the case of governmental plans), provided the plan is operated in accordance with the provisions as of their effective dates in the bill. The bill would also conform the plan amendment dates under the SECURE Act, the CARES Act, and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 to these new dates (instead of 2022 and 2024).

More to Come

The Retirement Learning Center will continue to keep a close eye on SECURE Act 2.0, with more action expected this fall.