Retirement Plan Challenges and Opportunities – SECURE 2.0 Act of 2022

Related Professionals

Michael T. Brittingham
803.253.8289
mbrittingham@maynardnexsen.com

Jim P. Rourke
803.540.2030
jrourke@maynardnexsen.com

Practices

Employment Immigration

Article
12.28.2022

Last Friday Congress passed its year-end omnibus spending bill avoiding a wide-spread government shutdown. We expect President Biden to sign this bill any day. The final legislation includes the SECURE 2.0 Act of 2022 ("SECURE 2.0") which contains substantial and far-reaching provisions that will have an impact on retirement plans, plan sponsors, and plan participants. The following list summarizes some of the most important provisions to consider as we enter 2023 (assuming, of course, the President signs this legislation):

- **Automatic Enrollment and Escalation.** Under SECURE 2.0, ***new*** 401(k) and 403(b) plans would be required to auto-enroll participants with a deferral percentage of between 3 and 10%, with auto-escalation at 1% per year up to a minimum of 10% and maximum of 15%. Participants may opt out of these provisions. Small businesses, new businesses and church and government plans would be exempted from this provision. Additionally, under the new law employers could further incentivize participation with small financial incentives (e.g., low-dollar gift cards).

- **Self-Correction Program Modifications**. While the IRS has worked in recent years to expand self-correction programs available under its Employee Plans Compliance Resolution System (EPCRS), employers have generally felt constrained when self-correcting retirement plan failures. SECURE 2.0 provides that "any eligible inadvertent failure to comply" with certain Tax Code provisions may be self-corrected under the EPCRS so long as it is corrected in a timely manner. While subject to additional IRS guidance, this expansion should substantially ease the correction of retirement plan issues in the future.

- **Plan Eligibility for Long-Term, Part-Time Employees.** Currently, any part-time employee working at least 500 hours per year for a three-year period must be eligible to participate in his/her employer's retirement plan. SECURE 2.0 would reduce the consecutive annual requirement from three years to two years.

→ **Increased Age for Required Minimum Distributions (RMDs).** Current law requires retired employees begin RMDs at age 72. If passed, SECURE 2.0, would increase the required minimum distribution age to 73 beginning January 1, 2023, and to 75 beginning in 2033.

→ **Catch-up Contribution Limits.** SECURE 2.0 would substantially increase catch-up limits for participants aged 60-63—to the greater of $10,000 or 150% of the "standard" catch up amount for that year. Additionally, for participants earning more than $145,000, all catch-up contributions will have to be deposited into an after-tax Roth account.

→ **Portability and "Lost and Found".** SECURE 2.0 would create of a searchable database to help identify lost and missing retirement plan account balances. The retirement savings "lost and found" would be housed at the Department of Labor and would be created within two years of enactment. Such a clearinghouse would substantially ease the burden currently placed on employers to find missing participants. Additionally, with respect to portability, employers could automatically transfer account balances up to $7,000—a $2,000 increase from current law—into a default IRA unless the participant elects otherwise. Further, service providers would be able to automatically transfer account balances when a participant changes jobs.

→ **Expansion of Emergency Distributions.** SECURE 2.0 also expands participants' current access to their retirement savings. Participants would be able to access up to $1,000 as emergency savings, and up to $22,000 to pay for expenses related to a natural disaster. That emergency distribution of up to $1,000, could only be taken once per year, but wouldn't be subject to the usual additional 10 percent penalty for early distributions. If the emergency distribution is not repaid, participants would be prohibited from taking additional emergency distributions for three years. With respect to hardship withdrawals, participants could withdraw up to $22,000 to pay for expenses related to a natural disaster, taxable as gross income over three years without additional penalty. Survivors of domestic abuse could also withdraw the lesser of $10,000 or 50% of their retirement account without penalty upon self-certifying as a survivor of domestic abuse.

→ **Matching Contributions.** SECURE 2.0 would replace the nonrefundable Saver's Credit for an actual matching contribution funded by the federal government, which would be credited to eligible participants' plan accounts. The match would be 50% of retirement plan contributions up to $2,000 per person. Research sponsored by the American Retirement Association suggest that more than 108 million Americans would be eligible for this government match. Additionally, SECURE 2.0 codifies current generally accepted matching contribution programs which treat student loan repayments as elective deferrals for purposes of calculating employer matching contributions.

→ **"Starter K" Program.** This new program would allow employers that have never sponsored a retirement plan to adopt a "starter" plan, which would provide automatic 3% deferrals for employees and no employer matching contributions. SECURE 2.0 also incentivizes the adoption of these "starter" plans with valuable tax credits.

As you can see, SECURE 2.0 touches some of the most foundational aspects of an employer's retirement plan administration obligations. We intend to provide additional discussion of SECURE 2.0 and its many provisions impacting employer-sponsored retirement plans. We encourage you to monitor our Mid-week Memos for future articles and reach out to Mike Brittingham or Jim Rourke with any questions as we continue to track SECURE 2.0 and related developments.