NAIFA | Advocacy

What You Need to Know

SECURE 2.0

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SECURE 2.0 is now the law. The lame duck 117th Congress passed it as part of the omnibus government funding bill which President Biden signed into law on December 29 (Public Law 117-328). The retirement savings package, now officially named SECURE 2.0, contains 90 provisions, many of which will impact NAIFA members who advise clients on their retirement savings choices.

Let's take a look at some of its notable provisions:

Individual Participant Provisions

Employer Plan Design

Student Loan and Hardship Plans

Administrative and Misc. Provisions

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Individual Participant Provisions

Required Minimum Distributions (RMDs): This provision increases the age at which RMDs are required. The new rule states that the age at which RMDs will be required will be 73 for those who reach age 72 after December 31, 2022, and age 73 before January 1, 2033. The RMD age will be 75 for those who reach age 74 after December 31, 2032. RMDs are eliminated for Roth 401(k) accounts starting in 2024. The RMD excise tax is reduced from 50% to 25%.

Charitable distributions: The bill allows for a one-time $50,000 distribution to charities through charitable gift annuities, charitable remainder trusts, and charitable remainder annuity trusts. It also indexes for inflation the annual IRA charitable distribution limit of $100,000. The effective date for these provisions is taxable years ending after the date of enactment.

Rollovers from 529 plans: The omnibus bill allows 529 plan owners, who have owned their plans for at least 15 years, to roll over up to $35,000 (over a lifetime) to a Roth IRA. The rollovers would be subject to Roth annual contribution limits. The rule would take effect for distributions after December 31, 2023.

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Catch-up contributions under a retirement plan or IRA: In 2023, the retirement plan catch-up contribution for those over 50 is $7500. Starting in 2024, catch-up contributions for those ages 60 to 63 will be increased to the greater of $10,000 or 50% more than the regular catch-up contribution amount in 2024. Catch-up contributions will be indexed for inflation starting after 2025. IRA catch-up contribution for an individual who attains age 50 will be indexed for inflation starting in 2024.

Saver's Tax Credit: SECURE 2.0 contains an enhancement of the Saver's tax credit—under this provision eligible individuals (generally, those with joint income of up to $41,000 to $71,000; $20,500 to $35,500 for single or married filing separately taxpayers; and $30,750 for heads of household). These amounts are indexed. These taxpayers will get a matching contribution from the government of 50 percent of the amount they contribute to a retirement savings plan or an IRA, up to a cap of $2,000. The 50 percent match is payable by Treasury, directly into the retirement plan or IRA designated by the taxpayer, after the taxpayer files his/her/their tax return. The provision becomes effective for taxable years beginning after December 31, 2026.

Long-term care insurance (LTCi): The legislation would allow individuals to use up to $2,500 (indexed) to pay for "certified" LTCi without incurring an early withdrawal penalty tax. The LTCi would have to offer benefits available under a qualified LTCi policy. And there are rules regarding notice and disclosure to both Treasury and the policyholder. This provision would take effect three years after the bill's date of enactment.

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Employer plan design provisions

Auto-enrollment: The bill includes a requirement that new retirement savings plans include an automatic enrollment feature that automatically enrolls eligible plan participants in a plan that defers three percent of their compensation (up to a maximum of 10 percent) into the plan. The provision does not require employer contributions, and it allows employees to opt out of the automatic compensation deferral. It also requires an automatic escalation of the percentage of compensation to be deferred into the retirement plan, at the rate of one percent per year until it reaches a maximum of at least 10 percent but not more than 15 percent. The new rule exempts very small businesses (those with 10 or fewer employees), church plans, governmental plans, and new plans (those sponsored by businesses that have been in business for fewer than three years). The provision would take effect for plan years beginning after December 31, 2024.

Starter 401(k) plan: A new "starter 401(k)" plan design is included in SECURE 2.0 for employers that do not yet sponsor a retirement plan.. Generally, the new plan design allows for an annual $6000 (indexed) contribution limit. It's subject to automatic enrollment rrules (which allow for an employee opt-out) at a three to 15 percent of compensation deferral rate.. This new plan design becomes available for plan years beginning after December 31, 2023.

Automatic portability: SECURE 2.0 allows a retirement plan service provider to provide plan sponsors such services as the automatic transfer of a participant's default IRA into the participant's new employer's retirement plan, unless the participant affirmatively elects otherwise. The rule would be effective for transactions occurring on or after 12 months after SECURE 2.0's date of enactment.

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Annuities: The bill eases the minimum distribution rules applicable to life annuities by permitting such features as modest benefit increases of only one or two percent, return of premium death benefits, and period certain guarantees. These eased rules would become effective as of the calendar year ending after the date of enactment of the omnibus bill.

Also in the bill is a provision repealing the qualifying longevity annuity contract (QLACs) 25 percent limit and allowing up to $200,000 (indexed) from a retirement plan account balance to be used to purchase a QLAC. The provision includes spousal survival rights and allows for a free look period of up to 90 days. The new rules will take effect for contracts purchased (or received in an exchange) on or after the omnibus bill's date of enactment.

In addition, the SECURE 2.0's annuity provisions include a directive that Treasury update ETF (exchange traded funds) regulations to allow for insurance-dedicated ETFs so that these investments can be made in variable annuities. The regulations must be updated by seven years of the omnibus bill's date of enactment.

Finally, the new law would allow an account holder to aggregate distributions from an account that holds an annuity with the rest of the account's assets for purposes of calculating RMDs. Effective on the bill's date of enactment, the rule includes a directive to Treasury to update the relevant regulations.

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Increase in SIMPLE plan contribution limit: The bill increases the SIMPLE plan nonelective contribution limit from either two percent of compensation or three percent of employee elective deferral contributions to the lesser of up to 10 percent of compensation or $5000 (indexed). This takes effect in 2024. It also ups a SIMPLE plan's annual deferral limit at age 50 10 percent (as compared to the inflation adjusted limit for this year) for SIMPLE plan sponsors with no more than 25 employees. For employers with 26 to 100 employees, the higher deferral limit would be available if the employer provides either a four percent matching contribution or a three percent employer contribution. These changes also apply to SIMPLE 401(k) plans. These provisions go into effect for plan years beginning after December 31, 2023.

Roth treatment of catch-up contributions: Generally, the legislation requires Roth treatment (after-tax contribution/tax-free distribution) of catch-up contributions made by those earning $145,000/year or more (indexed). This Roth rule takes effect for taxable years after December 31, 2023.

Roth treatment of SIMPLE and SEP plan contributions: The provision allows Roth (after-tax contributions/tax-free distributions) treatment for SIMPLE and SEP IRAs contributions, as of 2024.

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Long-term part-time employees: The omnibus bill includes a provision that makes long-term (those with at least two years of service, down from current law's three years of service) part-timers (those with 500 hours/year of service) eligible to participate in an employer-sponsored plan.

MEPs and PEPs: SECURE 2.0 allows Pooled Employer Plans (PEPs) to name a fiduciary (other than an employer participating in the plan) to collect contributions to the plan, subject to "reasonable, diligent and systematic" written collection procedures. This would take effect next year, for plan years beginning after December 31, 2022. Multiple employer plans (MEPs) would become available to 403(b) plans, as of next year (plan years beginning after 12/31/22). The legislation also allows, for three years, employers that join a MEP to qualify for the small employer pension plan start-up plan credit.

Small Employer pension plan start-up costs tax credit: This provision increases the small business start-up credit from 50 percent of administrative costs, up to a cap of $5,000, to 100 percent of those costs for employers with up to 50 employees. There will also be an additional credit (not available to defined benefit plans), equal in the first two years to 100 percent of the employer's contribution to its employees, up to a per-employee cap of $1,000. The full additional credit is available to employers with 50 or fewer employees, but phases down for employers with between 51 and 100 employees. The credit is available for five years, but phases down, at the rate of 25 percent per year, for years three, four and five. These tax credits become available for taxable years beginning after December 31, 2022.

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***403(b) plan/CITs*:** The bill allows 403(b) plans to offer collective investment trust (CITs) among their plan's options, effective after date of enactment. However, securities laws remain in effect making this CIT relief difficult to access.

Mandatory distributions: Effective for distributions made after December 31, 2023, a new rule in the bill would allow employers to transfer former employees' retirement accounts into an IRA if their account balance is less than $7,000. This is an increase from current law's $5,000 limit.

Reliance on employee self-certification: The bill provides that plan sponsors can rely on employee self-certification that they have a qualifying hardship event that allows them to take a hardship withdrawal from their retirement savings account. This is effective for plan years beginning after the date of enactment.

Termination of variable rate premium indexing: SECURE 2.0 also provides that there will be a flat $52 premium for each $1,000 of unfunded vested benefits in variable rate premium pricing. This takes effect as of the bill's date of enactment.

Excess pension funds can go to retiree health plans: The bill extends the rule that allows an employer to use assets from an overfunded pension plan to pay retiree health and life insurance benefits. The extension is from the end of 2025 to the end of 2032. Overfunding amounts that could be used for retiree health benefits can be no more than 1.75 percent of plan assets and the plan must be at least 110 percent funded.

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Student Loan and Hardship Plans

Student loans: SECURE 2.0 allows employees to qualify for employer matching payments under a 403(b), 401(k), 457(b) or SIMPLE plan based on them making qualified student loan payments. Discrimination testing will be separate for matching contributions made relative to student loan payments. The provision is effective for plan years beginning after December 31, 2023.

Emergency savings: SECURE 2.0 contains two separate emergency savings provisions. One would permit withdrawal, without tax penalty, from retirement plans of up to $1,000 in a year, in the case of unforeseeable or immediate financial need relating to personal or family emergency expenses. The withdrawal could be repaid within three years. Further withdrawals would be permitted only if the existing withdrawal has been repaid. This emergency savings provision takes effect for distributions made after December 31, 2023.

The other emergency savings provision authorizes creation of pension-linked emergency savings accounts in defined contribution plans. Non-highly compensated employees (NHCEs) could contribute up to $2,500 to a pension-linked emergency savings account (which would be a separate account within the retirement savings plan). Contributions would be subject to Roth rules (after-tax contributions/tax-free withdrawals), and would be treated as elective deferrals for purposes of retirement matching contributions. At separation from service, the pension-linked emergency savings account could be rolled over into a Roth IRA or Roth defined contribution plan. These accounts could not charge fees for the first four withdrawals for emergencies and there are anti-abuse, fiduciary and reporting rules attached to them. Generally, contributions would get Roth treatment. Withdrawals from these accounts would not halt matching contributions to the plan. The pension-linked emergency savings provision would take effect as of 12 months of the omnibus bill's date of enactment.

Reliance on employee self-certification: The bill provides that plan sponsors can rely on employee self-certification that they have a qualifying hardship event that allows them to take a hardship withdrawal from their retirement savings account. This is effective for plan years beginning after the date of enactment.

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Administrative and Misc. Provisions

SECURE 2.0 also contains provisions regarding simplification of reporting, notice and disclosure requirements; ESOPs; government and first-responder plans; de minimis financial incentives to encourage participation in an employer sponsored plan; rules applicable to special needs and domestic abuse situations; the processes used to correct errors in retirement plan administration; “lost-and-found” rules; distributions related to natural disasters; paper statement requirements; and various studies on the effectiveness of current rules and programs. Also included in the bill are technical corrections to the SECURE Act.

Next steps

There will be numerous regulatory projects required to implement the new SECURE 2.0 rules. These will take much of DOL's and Treasury's focus and time. In addition, lawmakers and their staffs will collect information regarding necessary technical corrections to SECURE as well as potential new changes for yet another retirement savings package (some are already calling it SECURE.3.0). However, do not expect a new retirement bill to be proposed any time soon. The dust has barely settled on both SECURE 1.0 and SECURE 2.0. It is worth noting that before the two SECURE Acts, the last large pension reform bill was enacted in 2006. So, both lawmakers and regulators will want time to assess the impact of these two laws before trying to move a new law. NAIFA remains in close touch with those working on retirement savings issues, though, and will be instrumental in the effort to add even more incentives for retirement savings.

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