Securing a Strong Retirement Act of 2022

March 31, 2022

Highlights

- SECURE Act 2.0 Enjoys Broad Bipartisan Support
- Changes Meant to Boost Plan Participation
- Increased Flexibility for RMDs
- Plan Administration Changes Improve Efficiency

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SPECIAL REPORT

House Passes "SECURE Act 2.0" With Bipartisan Approval

On March 29, 2022, the House of Representatives passed the Securing a Strong Retirement Act of 2022 by a vote of 414 to 5. The bill, widely known as SECURE Act 2.0, has been sitting in a proposal stage for more than a year, and follows the original SECURE Act passed as part of the Consolidated Appropriations Act, 2020 in December of 2019. As the vote totals in the House indicate, the bill enjoys strong bipartisan support, and it is expected to pass in the Senate when that chamber considers it.

The Securing a Strong Retirement Act of 2022 is designed to build upon the provisions of the original SECURE Act and further ensure that more Americans can save for retirement and increase the amount they are able to save. The bill does this by expanding upon automatic enrollment programs, helping to ensure that small employers can easily and efficiently sponsor plans for employees, and enhancing various credits to make saving for retirement beneficial to both plan participants and plan sponsors. The bill also improves various investment options for plan participants, streamlines plan administration for plan fiduciaries, and makes important changes to required minimum distributions that will help retirees with plan selections and decisions that will enhance their ability to make better use of their retirement savings.

INCREASING PLAN PARTICIPATION

Automatic Enrollment

One of the most broadly applicable provisions of the bill requires that, effective for plan years beginning after 2023, 401(k) and 403(b) sponsors automatically enroll employees in plans once they become eligible to participate in the plan. Under the requirement, the amount at which employees are automatically enrolled cannot be any less than three percent of salary, and no more than ten percent. The amount of employee contributions is increased by one percent every year after automatic enrollment, up to a maximum contribution of ten percent. Employees can opt out of the automatic enrollment if they choose.

COMMENT. *Many employers have taken it upon themselves to automatically enroll employees in 401(k) and 403(b) plans since first allowed to do so more than 20 years ago, and this has, unsurprisingly, led to an increase in plan participation and retirement savings. However, under this provision, automatic enrollment would be required.*

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Exceptions to the automatic enrollment requirement are provided to businesses with ten or fewer employees, businesses that have been in existence for less than three years, church plans, and government plans.

Saver's Credit

For tax years beginning after 2026, the saver's credit is simplified from its current three-tier structure based upon income amounts to a unified 50 percent credit amount, with a phaseout for higher incomes. Additionally, the Treasury is directed to take steps to increase public awareness of the credit.

> *"The Securing a Strong Retirement Act of 2022 is designed to build upon the provisions of the original SECURE Act..."*

Catch-Up Limits

The annual amount that can be contributed to a retirement plan is limited, and this limitation amount is generally subject to annual adjustments for inflation. For plan participants aged 50 or older, the contribution limitation is increased ("catch-up contributions"). For 2022, the amount of the catch-up contribution is limited to $6,500 for most retirement plans, and $3,000 for SIMPLE plans, and are subject to inflation increases. Under the Securing a Strong Retirement Act of 2022, a second increase in the contribution amount would be available for participants aged 62, 63, or 64, effective for tax years after 2023. For most plans, this "second" catch-up limitation would be $10,000, and $5,000 for SIMPLE plans. Like the "standard" catch-up amount, these limitations would also be subject to inflation adjustment.

The annual limit on contributions to individual retirement accounts (IRAs) is also increased for participants aged 50 and older. The "catch-up" limit for IRAs is $1,000. Unlike the catch-up amount for other plans, this amount is not subject to increases for inflation under current law. The Securing a Strong Retirement Act of 2022 would make the IRA catch-up amount adjusted annually for inflation for tax years beginning after 2023.

Finally, the bill requires, effective for tax years beginning after 2022, that all catch-up contributions are subject to Roth (i.e. after-tax) rules, rather than only where allowed by the plan.

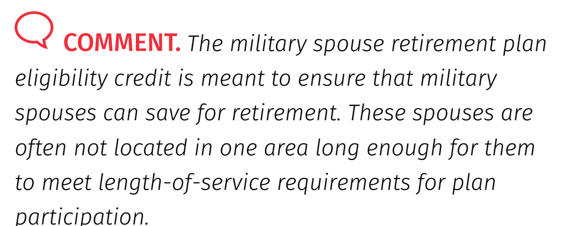
SMALL EMPLOYERS

Currently, as established by the original SECURE Act, for the first three years an eligible small employer establishes an eligible plan, it can claim a credit of 50 percent of start-up costs with the credit not to exceed the greater of (1) $500 or (2) the lesser of $250 for each employee eligible to participate in the plan who is not highly compensated or $5,000.

Under the Securing a Strong Retirement Act of 2022, effective for tax years beginning after 2022, the length of time for which the credit can be claimed is extended to five years for employers with 50 or fewer employees. Additionally, the amount of the credit is increased to 100 percent of startup costs for employers with 50 or fewer employees, with a cap of $1,000 per employee. The 100 percent credit amount is phased out for employers with 51 to 100 employees, and also drops incrementally to 25 percent in the fifth year.

The bill also retroactively makes the startup credit (as expanded by the original SECURE Act) available to small employers that join a multiple employer plan (MEP) that was already in existence. Without this fix, the small employer would not have been eligible for the credit if the MEP had been in existence for three years. The fix is effective for tax years beginning after 2019.

The bill also provides a credit for small employers who make military spouses immediately available to participate in the employer's retirement plan. The credit is effective for tax years beginning after the date of enactment of the bill.


COMMENT. *The military spouse retirement plan eligibility credit is meant to ensure that military spouses can save for retirement. These spouses are often not located in one area long enough for them to meet length-of-service requirements for plan participation.*

The Securing a Strong Retirement Act of 2022 also allows employers sponsoring 403(b) plans, which are typically charitable organizations and other non-profits, to participate in MEPs just like sponsors of 401(k) plans. This expansion is effective for plan years beginning after 2022.

REQUIRED MINIMUM DISTRIBUTIONS

Under current law, as enacted as part of the original SECURE Act, plan participants are required to begin taking distributions ("required minimum distributions" or

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"RMDs") at age 72. Under the Securing a Strong Retirement Act of 2022, the age at which participants must begin taking distributions is increased over a period of ten years. Starting in 2023, the age is increased to 73. The age at which participants must begin taking RMDs is further increased to 74 beginning in 2030, and again increased to 75 beginning in 2033.

The bill would also reduce the penalty on failures to take a required minimum distribution from 50 percent to 25 percent. The 25 percent penalty would be further reduced to 10 percent if corrective action is taken in a timely manner. The reduction is effective for tax years beginning after 2022.

ADDITIONAL PROVISIONS

Annuities

The Securing a Strong Retirement Act of 2022 eliminates an actuarial test in the regulations relating to required minimum distributions that limits the use of certain annuities in defined contribution plans and individual retirement accounts. The modification makes it possible for participants to make elections to use annuities that provide only a small financial benefit but important guarantees. The change is effective for calendar years after the date of enactment.

The bill also removes statutory barriers to the adoption and growth of qualifying longevity annuity contracts that caused regulations relating to required minimum distributions to limit their adoption. The provision is effective on the date of enactment.

Miscellaneous Improvements

The Securing a Strong Retirement Act of 2022 includes several other provisions meant to expand participation and boost retirement savings. Still other changes are intended to streamline plan administration. These additional improvements include (effective date noted in parentheses):

- Allowing SIMPLE IRAs to accept Roth contributions and granting the ability to treat employee and employer simplified employee pension contributions as Roth contributions (tax years after 2022);
- Conforming 403(b) hardship rules to 401(k) hardship rules (plan years after 2022);
- Allowing plans to provide participants with the option of receiving matching contributions to a defined contribution plan on a Roth (i.e. after-tax) basis (after date of enactment);
- Allowing employers to make matching contributions to employee plans for the employee's student loan payments (plan years beginning after 2022);
- Allowing employers to give employees de minimis low-cost incentives, like gift cards, to incentivize employee contributions to qualified plans (plan years beginning after date of enactment);
- Allowing employers a grace period to correct mistakes without penalty when establishing automatic enrollment and contribution escalation plans (after date of enactment);
- Reducing SECURE Act length-of-service requirements for part-time participants in sponsored plans from three years to two years (plan years beginning after 2022);
- Allowing plan fiduciaries to decide not to recoup overpayments from retirees in the case of mistaken overpayment of benefits, and establishing limits on fiduciaries that do decide to recoup (after date of enactment);
- Eliminating notification requirements to unenrolled plan participants, but requiring an annual notification to these participants of plan requirements and deadlines to encourage participation (plan years beginning after 2022);
- Eliminating the "first day of the month" requirement for requesting changes to governmental 457(b) plans (tax years beginning after date of enactment);
- Requiring the IRS to update regulations to allow insurance-dedicated exchange-traded funds.

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