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SECURE 2.0 could mean significant changes to retirement savings plans

On March 29, 2022, the U.S. House of Representatives overwhelmingly passed the Securing a Strong Retirement Act of 2022 (HR 2954), which would significantly change retirement plans to further promote retirement savings. The bill is now with the U.S. Senate, where modifications are expected.

Background

The Setting Every Community Up for Retirement Enhancement Act of 2019 ("2019 SECURE Act") was signed into law on December 20, 2019 to help Americans save for a secure retirement. In furtherance of that goal, the Securing a Strong Retirement Act was introduced in 2020 (and was reintroduced in 2021). In 2021, the Retirement Improvement and Savings Enhancement (RISE) Act was also introduced to encourage retirement savings. The Securing a Strong Retirement Act of 2022 (SECURE 2.0) combines the provisions of the SECURE and RISE Acts. SECURE 2.0 updates some of the 2019 SECURE Act provisions and adds new provisions primarily aimed at incentivizing workers to save more for retirement.

Updates to the SECURE Act

Increase in the age for required minimum distributions (RMDs). To reflect mortality improvements, the SECURE Act increased the beginning age for minimum required distributions from age 70½ to age 72 for individuals attaining age 70½ after 2019. SECURE 2.0 will gradually increase this age even further, to age 73 starting on January 1, 2023, age 74 on January 1, 2030, and finally age 75 on January 1, 2033.

Inclusion of part-time employees. The SECURE Act provided that for plan years beginning after 2020, non-bargained 401(k) plans could no longer exclude long-term part-time employees from making deferral contributions if they work at least 500 hours in each of three consecutive years and attain age 21. SECURE 2.0 reduces this three-year requirement to two years for plan years beginning after December 31, 2022.

Wider opportunity to participate in MEPs. The SECURE Act expanded the opportunity for employers to participate in a multiple employer plan (MEP) by eliminating the requirement that the employers have a “common interest” if the plan has a “pooled plan provider.” It also eliminated the rule that noncompliance by one participating employer disqualifies the entire MEP (the “one bad apple” rule). SECURE 2.0 would be effective for plan years beginning after December 31, 2022 and would allow 403(b) plans to participate in a MEP and a pooled employer plan to designate a named fiduciary to collect contributions. It also provides that the violations of one participating employer will not affect the treatment of the other employers in the plan.

Limitation of repayment period for $5,000 withdrawal due to birth or adoption of child. The SECURE Act allowed defined contribution plans (including qualified plans such as 401(k) plans, 403(b) custodial account plans, and governmental 457(b) plans) to offer in-service distributions to participants who wish to take a qualified birth or adoption distribution of up to $5,000 per child. These distributions are not subject to the 10% premature distribution penalty. Under the SECURE Act, these distributions can be recontributed to the plan at any time. SECURE 2.0 limits this recontribution period to three years and is effective retroactively to distributions made after December 31, 2019.

Other retirement plan provisions in SECURE 2.0

Automatic enrollment in defined contribution plans. 401(k) and 403(b) plans would be required to automatically enroll employees once they become eligible for the plan. The automatic enrollment percentage must be between three and ten percent, with a one percent automatic escalation each year (to a maximum of 10%). Participants may opt out. There would be exceptions for existing plans, church and governmental plans, small businesses, and new businesses. These provisions would be effective for plan years beginning after December 31, 2023.

Catch-up contribution updates. Currently, participants who are age 50 or over can make “catch-up” pre-tax and/or Roth contributions to their retirement plans in excess of the otherwise applicable limits. The maximum catch-up contribution is $6,500 and has not been increased since 2020. SECURE 2.0 would increase this amount to $10,000 for those who are ages 62-64 for tax years beginning after December 31, 2023. Additionally, for tax years beginning after December 31, 2022 and regardless of age, catch-up contributions would only be allowed on a Roth basis.

Matching contributions on student loan repayments. Private and governmental employers would be permitted to credit employees with matching contributions on “qualified student loan payments,” effectively treating these loan repayments as retirement plan deferrals in plan years beginning after December 31, 2022.

Roth matching contributions. Currently, matching contributions made to 401(k), 403(b), and 457(b) plans must be made on a pre-tax basis. SECURE 2.0 would allow these plans to give participants the option of receiving matching contributions on a Roth basis, after the date of enactment.

Involuntary cash out maximum increase. Currently, retirement plans can force a participant to take a lump sum payment or rollover if the value of the benefit does not exceed $5,000. SECURE 2.0 increases this limit to $7,000, effective for distributions after December 31, 2022.

Expansion of EPCRS. Secure 2.0 includes several provisions that would expand the IRS' Employee Plans Compliance Resolution System (EPCRS) program, effective after the date of enactment.

- Allows more type of self corrections, including correction of auto-enrollment and auto-increase failures that are corrected within 9½ months after the end of the year in which the failure occurred
- Permits self-correction of plan loan failures
- Creates more safe harbors for inadvertent failures
- Overpayments mistakenly made to retirees would not have to be recovered and any rollovers of those amounts would remain valid
- Reduces the excise tax for failure to take a required minimum distribution

Reporting and disclosure rules. Several provisions affecting the reporting and disclosure requirements are included.

- Certain ERISA and Code notices that must be regularly provided to all eligible employees would not have to be provided after an employee waives enrollment (annual reminder of eligibility required).
- Defined contribution plans would have to provide an annual paper statement to participants unless the participant opts out.
- Directs Treasury, DOL and PBGC to review reporting and disclosure requirements for pension plans to consolidate, simplify, standardize and improve those rules.

A potpourri of other retirement plan provisions. SECURE 2.0 includes additional provisions applicable to retirement plans, including:

- *Hardship withdrawals*:
  - Employers can rely on participant self-certification of hardship.
  - Participants who are victims of domestic abuse can take a limited hardship withdrawal that would not be subject to the 10% early withdrawal penalty tax. Participants would have the option of repaying the withdrawal within three years and receive a refund of taxes paid.
  - Earnings on 403(b) pre-tax deferrals would be eligible for hardship withdrawals, conforming to the rules applicable to 401(k) plans.

- *Financial incentives*: Plan sponsors would be permitted to offer small financial incentives (e.g., low amount gift cards) to employees who make contributions to the plan.
- *Lost participants*: Creation of a national searchable online database where participants could search for their lost retirement accounts.
- *Top-heavy testing*: Can be performed separately for nonexcludable and excludable employees.
- *Governmental 457(b) plans*: Elimination of the requirement that an election to change the rate of deferral must be made before the first day of the month in which the deferral is made.
- *Early distribution penalty in governmental plans*: Qualified public safety employees would not be subject to the 10% early distribution penalty tax at age 50 instead of age 55.
- *Disability-related payments to first responders*: Certain disability-related, retirement payments to first responders would be excluded from gross income upon reaching retirement age.
- *Prior-year accruals*: Amendments to increase benefit accruals for the prior year would be permitted up until the employer's tax return due date.
- *Collective trusts for 403(b) plans*: Permits 403(b) plans to invest in common collective trusts.
- *Changes to ESOPs*: Deferral of tax on certain sales of employer stock in an ESOP sponsored by a C corporation will be allowed. Rules for treatment of certain securities as publicly traded will be updated.
- *RMD barriers*: Barriers to commercial life annuities resulting from the actuarial test in RMD regulations will be removed.
- *Qualified longevity annuity contracts*: Relaxation of some qualified longevity annuity contract rules as a way to defer RMD payments to hedge outliving savings.
- *Insurance dedicated exchange-traded funds*: These will now be permitted.
- *Target date funds*: DOL will update regulations for benchmarking an investment that uses a mix of asset classes against a blend of broad-based securities market indices, e.g., target date funds.
- *Small employers*: Additional incentives will be extended to small employers who establish plans.

Plan amendments under SECURE 2.0

SECURE 2.0 provides for an extended remedial amendment period. This means that although plans must comply with the SECURE 2.0 provisions in operation starting with the effective dates specified, plan documents can be updated to incorporate the required plan provisions by a later date — the last day of the first plan year beginning on or after January 1, 2024, unless the Secretary of Treasury provides an extension. For governmental plans, the deadline would be no later than January 1, 2026. These dates would also apply to and extend SECURE Act and CARES Act plan amendments.

In closing

Many of the SECURE 2.0 provisions could require significant changes to retirement plans. Passed by the House, it is now with the Senate committee. The bill has strong bipartisan support in the Senate and could be approved as early as May. Buck will continue to monitor this legislation and provide additional information when the Senate acts.

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