WHAT TO LOVE (& FEAR) ABOUT SECURE 2.0 NOW

IT'S COMPLEX, CONFUSING, AND FILLED WITH OPPORTUNITIES FOR ADVISORS, PLAN SPONSORS, AND—IMPORTANTLY—PARTICIPANTS. WHAT SHOULD RETIREMENT PLAN PROFESSIONALS WATCH, AND WATCH OUT FOR, IN THE LANDMARK LEGISLATION? OUR EXPERTS WEIGH IN. BY JOHN SULLIVAN

"HOW DO YOU EAT AN ELEPHANT?" ONEDIGITAL RETIREMENT + WEALTH'S PHIL TROYER RHETORICALLY ASKED WHEN DESCRIBING SECURE 2.0'S SIZE AND COMPLEXITY. "A BITE AT A TIME."

It's an attitude emblematic of the industry as a whole in the wake of the passage of the SECURE 2.0 Act of 2022. While excited for the potential benefits of the latest retirement plan legislation, its numerous provisions, effective dates, grandfather clauses, and—yes—technical errors make for a heavy lift. With 92 provisions with 358 pages of legislative text, there's a lot to absorb and assimilate, and its integration into advisor, recordkeeper and plan sponsor daily processes has the potential to be rewarding—yet challenging.

According to the lawyers, aggregators, recordkeepers, and plan professionals we spoke with, the first step is to focus on the here and now (and in some cases, "then"); the mandatory and optional pieces with either retroactive or fast-approaching implementation dates.

"The act is so large, I think it's overwhelming to plan sponsors and, to some extent, advisors," Troyer said. "What I'm trying to get them to do is just focus on what's going into effect immediately."

"My biggest concerns are all the moving pieces," Renee Scherzer, Principal and Retirement Plan Consultant at 401K Resources, added. "Trying to determine optional versus mandated, the pockets of years, pre-tax, Roth and the $145,000 income cap and what determines that, the current year, previous year, all these little nuances."

The Wagner Law Group's Tom Clark compared it to the frenzy and stress of a Disney classic.

"It's like 'One Hundred and One Dalmatians,'" he said. "There are a hundred different things in this legislation to figure out. Every advisor I've spoken with is super-concerned that [all but the largest] recordkeepers will not be able to build out the technology and workflows fast enough to keep up with the legislative changes."

Because recordkeepers are often "brought to the table" by the advisor, any hiccups reflect poorly on both.

"It's an uncontrollable factor for advisors," Clark warned. "In light of the next two-year schedule, I would be out ahead of it and having conversations with my recordkeeping partners early and often."

ADVISOR ADVANTAGES

While undeniably complex, the concerns don't detract from SECURE 2.0's opportunities. There's much to like in the new law, including its timeline. "I do like the fact that it's rolled out over the next five years, so we have time to absorb it and prepare for some of the provisions," Scherzer said.

"We're certainly seeing interest and understanding with respect to catch-up Roth's and self-certification of hardships," Amy Vaillancourt, Voya's Senior Vice President of Workplace Architecture, added. "We see primary interest in the provisions in that 'mandatory column. We're now seeing more conversations come from employers wanting to understand more about student loans and emergency savings. As we get into 2024, I really expect more appetite and conversations around some of those bigger provisions that help with that broader saving picture."

From the perspective of increasing coverage and enhancing retirement benefits, it's a win, according to Pension Institute and Retirement Law Group's Jason Roberts. Even when asked for negatives within the act, he remained positive about the prospects. While there's complexity for tax professionals, recordkeepers, and other industry stakeholders, "they'll sort it all out."

"All things considered, it's a good law," Roberts said. "I see more opportunities for advisors than struggles once they're educated on the nuances so that they can go out and convey that to their institutional and individual clients. I don't see anything other than just the technical nature of the tax code as being an impediment."

"Any new legislation creates exciting opportunities to learn and advise people," Faegre Drinker Biddle & Reath's Fred Reish added. "So, overall, that's good."

Reish and others interviewed mentioned the incentives and requirements to encourage small businesses to offer 401(k) plans as the most beneficial provisions—including tax credits, the Starter 401(k), and mandatory auto-enrollment—as well as the newly enhanced (and "branded") saver's match.

They're especially critical as tools to close both the savings and coverage gap(s), which refers to both a shortfall in needed funds to secure an affordable quality of life in retirement, and the difference in average savings amount among various demographic groups.

"We're focused on the Starter 401(k), because I work with organizations on the savings gap, especially for minority groups, women, and so on," Lisa Garcia, Retirement Plan Consultant with SageView Advisory Group., explained. "The provision would help a lot in that area, but it will take a lot of education …I also like the impact and the intention of the Saver's Match, but it will take a few years for it to be effective."

The following discussion of some (but not all) of SECURE 2.0's major provisions note their effective date and whether they are mandatory (M) or optional (O).

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"IT'S LIKE 'ONE HUNDRED AND ONE DALMATIANS.' THERE ARE A HUNDRED DIFFERENT THINGS IN THIS LEGISLATION TO FIGURE OUT."

MICRO PLAN BOOST

(Tax Credits, Starter 401(k), Auto-Enrollment)

Tax Credits (2023)—O

Secure 2.0 establishes a new tax credit and significantly expands an existing credit. The startup credit is increased to 100% for companies with 50 or fewer employees. The current cap of $5,000 per employer is retained. The new credit offsets up to $1,000 of employer contributions per employee in the first year, phased down gradually over five years.

The credit applies to companies with 100 or fewer employees. However, it is phased out for those with more than 50 employees. There is no credit for contributions to any employee making more than $100,000 annually (indexed after 2023). Also, there is no deduction for employer contributions that qualify for the credit.

"I like the fact it expands opportunities for small businesses and participants because of the tax credits for starting a new plan," Scherzer said. "They are really beneficial to so many companies."

Reish agreed, marveling at the tax credits' size, a level not seen in the retirement plan space until now.

"I almost think I would set up a new plan and contribute $1,000 for every employee," he explained. "If I had 20 employees, that'd be a $20,000 contribution as almost a profit-sharing contribution. Not as a percentage of pay, just $1,000 per employee. Why not? The government will give me that money back. For the first two years, I get all of it back. The third year I get 75% back. At least for the first three years, I would just structure it that way."

Starter 401(k) (2024)—O

The Starter 401(k) plan is a new wage deferral-only safe harbor 401(k) plan. According to the American Retirement Association's Andrew Remo, Director of Federal and State Legislative Affairs, employees can save up to $6,000 per year (with a $1,000 catch-up contribution) without the administrative burdens or expense of a traditional 401(k) plan. For example, the Starter 401(k) plan does not require employer contributions or complicated non-discrimination testing.

"The primary purpose of the Starter 401(k) plan is to create a 401(k) product similar to the auto-IRA products now being put forward by over a dozen states," he explained. "It will allow employers that adopt a plan in those states to choose a private sector 401(k) provider to meet the retirement plan coverage requirement embedded in these laws.

All employees must be defaulted into the plan at a 3% to 15% deferral rate. No employer contributions are permitted. However, there will likely be a future technical correction, as the section's text does not match the summary and intent. The summary says its limits will match IRA limits, but the text limits deferrals to $6,000 rather than including the increased IRA limits for future years.

"I like the new Starter (k) plan because, compared to state-mandated IRA plans, which I do like, they allow the assets to be aggregated," Reish said. "More services can therefore be provided, along with lower cost investments."

Auto-Enrollment, Escalation (2025)—M

All new 401(k) and 403(b) plans adopted after December 29, 2022 (the effective date of the legislation) —except businesses with fewer than 10 employees, new businesses less than three years old, and churches and governments—must, though not beginning until 2025, automatically enroll participants between 3% and 10%. They must also automatically increase the rate by 1% per year to at least 10%, but no more than 15%.

Employees would have at least 90 days to opt out and take a distribution of any automatic deferrals, and the plan must have an Eligible Automatic Contribution Arrangements (EACAs) withdrawal provision. It does not apply to SIMPLE plans (since they're IRAs) but applies to adopting a MEP after the enactment date (based on the employer's adoption, not the effective date of the MEP).

"I think auto-enrollment and having those kinds of paternalistic conversations with plan sponsors is a good thing for advisors who are super-concerned with enrollment and getting the numbers up, which is really the whole reason we do this," Clark said. "I think that's very positive."

Reish agreed, noting, "Of the mandatory provisions, I think the new automatic enrollment provision is head and shoulders above the rest in terms of the long-term impact it will have."

Believing it signals not only a legal change but a cultural change, "If you look out five years from now, we'll begin to view automatically enrolled and automatic [escalation] plans as the norm. It'll be the odd plan that doesn't automatically enroll."

403(b) Plan Provisions (2023, 2024)—O

There's an opportunity to bring 401(k)-like pricing and investments to 403(b) plans using MEPs and PEPs, which the bill now allows (other than church plans). It provides unified plan relief if a MEP satisfies requirements similar to 413(e) PEP rules. A governmental plan gets relief even if commonality requirements are not met. The bill also

Unfinished Business

SECURE 2.0's Unintended Consequences, Quirks and Glitches

By Ted Godbout

As with drafting any major legislation and its corresponding statutory language, things can get missed, and "wires" can get crossed. And the SECURE 2.0 Act of 2022 was no exception.

Some things were identified immediately, and some were known about in advance, while others weren't apparent until the ARA's legal counsel and government affairs team dug into the fine print of the legislation. In several cases, it's simply that the legislative language doesn't appear to match the presumed intent according to the Committee explanation(s) of the provision(s).

Below is a brief description of *some* of those provisions identified for rework.

Catch-up Contributions (Section 603 of SECURE 2.0): One of the biggest potential issues was a technical drafting error that could jeopardize future catch-up contributions. The original intent of the provision was to require that all catch-up contributions for those earning over $145,000 in compensation be treated as Roth beginning in 2024, but according to the current wording of the legislation, no participants will be able to make catch-up contributions—pre-tax or Roth.

The error came because of the elimination of a subparagraph in the body of the legislation to allow for a conforming amendment—but in the process, inadvertently eliminated the ability to make any pre-tax catch-up contributions. The ARA alerted congressional and regulatory officials and anticipate that the provision would be fixed before 2024.

Higher Catch-up Limits for Ages 60 – 63 (Section 109 of SECURE 2.0): This provision contains a typographical error. The Senate Finance Committee's explanation indicates the catch-up limit will be no less than 150% of the 2025 regular catch-up limit. The provision for SIMPLE Plans correctly references the 2025 limit. However, the provision for qualified plans references the 2024 regular catch-up limit. As a result, the higher catch-up limit for these eligible taxpayers would be based on the 2024 limit but for the 2025 tax year. Note also that after 2025, these amounts are to be indexed for inflation, which could create further confusion if the reference to 2024 is not fixed. The reference to "2024" in the legislation should be revised to "2025."

Starter 401(k) (Section 121 of SECURE 2.0): A summary by the Senate Finance Committee reflects an intent for the contribution limits of the Starter 401(k)/403(b) plans to be the same as the contribution limit for IRAs. However, the provision limits contributions to $6,000 (indexed), which is the 2022 limit and is lower than what the IRA limit will be in 2024 when the provision is intended to be effective (it is $6,500 for 2023).

Mandatory Auto Escalation and Starter 401(k)/403(b) Plans (Section 101 and 121 of SECURE 2.0): The Senate Finance Committee summary also reflects an intent for Starter 401(k)/403(b) plans to be on a similar footing to state-run payroll-deduction IRAs, which are not subject to Section 101's auto-escalation feature. In this case, the ARA has recommended that the plans be exempted from the automatic escalation requirement to reduce barriers to employers adopting starter plans.

Required Minimum Distributions (Section 107 of SECURE 2.0): This provision contains a typographical error, which could impact the timing of RMDs. The RMD age is 73 for someone who turns 73 in 2023-2032 and is age 75 for someone who turns 74 in 2033 or later. If someone attains the age of 73 in 2032, they also will turn age 74 in 2033. Therefore, they have two RMD ages and an apparent one-year RMD holiday. The ARA has suggested that the reference to "age 74" in the legislation should be revised to "age 73," but the issue will need to be addressed either way.

403(b)s and CITs (Section 128 of SECURE 2.0): While Congress had intended for the legislation to allow 403(b) plans to invest in collective investment trusts (CITs), a late-breaking jurisdictional conflict between lawmakers apparently left that intent only partially realized. The SECURE 2.0 did amend the Internal Revenue Code to allow 403(b)s to invest in CITs, but corresponding changes to the securities law were not included in the final legislation. Because existing Securities and Exchange Commission rules prohibit such investing, lawmakers would need to update the relevant securities law to endorse these changes. Until then, 403(b) plan investments will remain limited to annuity contracts and publicly traded mutual funds.

Replace SIMPLE IRA Mid-Year with a Safe Harbor Plan (Section 332 of SECURE 2.0): This provision currently conflicts with the Section 121 Starter 401(k) provisions. The provision permits the SIMPLE IRA to be replaced with a Starter 401(k)/403(b) plan. However, the employer would not be allowed to adopt a Starter 401(k) because the SIMPLE IRA disqualifies the employer from eligibility to sponsor the Starter 401(k)/403(b) plan. The ARA is advocating for the provision to be revised to eliminate the conflict by permitting the employer to adopt a Starter 401(k) in this circumstance or by removing the reference to 401(k) in the legislation.

Optional Treatment of Employer Matching or Nonelective Contributions as Roth Contributions (Section 604 of SECURE 2.0): Under current law, plan sponsors are not permitted to provide employer matching contributions in their 401(k), 403(b), and governmental 457(b) plans on a Roth basis. Section 604 of SECURE 2.0 now allows DC plans to provide participants with the option of receiving matching contributions on a Roth basis, effective on the date of enactment.

However, for those employer contributions to be treated as Roth, the employee would first have to be fully vested. If a plan has a vesting schedule, then it can only comply with the provision if the plan is changed. As this is an optional provision (both for the employer to allow and the employee to elect)—and one complicated from an administrative standpoint, it may not be an immediate issue—but it's one on which advisors may well need to educate plan sponsors. NNTM

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establishes that, in consultation with the DOL, the Treasury must provide education and outreach on fiduciary duties to plan sponsors.

Another provision aligns the 403(b) plan hardship distribution rules with 401(k) plans. In addition to elective deferrals, these plans may now distribute, on account of an employee's hardship, qualified nonelective contributions, qualified matching contributions, and earnings on any of these contributions (including on elective deferrals).

Lastly, while it was widely reported that 403(b) plans could now offer low-cost collective investment trusts (CITs), an investment option popular in 401(k)s, that news was a bit premature. As it turns out, 401(k)s currently enjoy certain securities law exemptions 403(b) s do not. While the legislation developed in the House addressed the issue, those in the Senate did not – could not, in fact, without including the Senate Banking Committee, which has jurisdiction over such matters. Despite some intense last minute negotiations, that piece didn't come together in time. From a practical standpoint, they are not yet available.

Emergency Savings Accounts (2024)—O

Employers may offer non-highly compensated employees (NHCE) what were called "pension-linked" emergency savings accounts and may automatically opt employees into these accounts at no more than 3% of their salary (despite the pension-linked label, this applies to defined contribution plans). These "sidecar" emergency savings accounts are capped at $2,500 (or lower, as set by the employer). Contributions are made post-tax and but are treated as elective deferrals for retirement matching contributions.

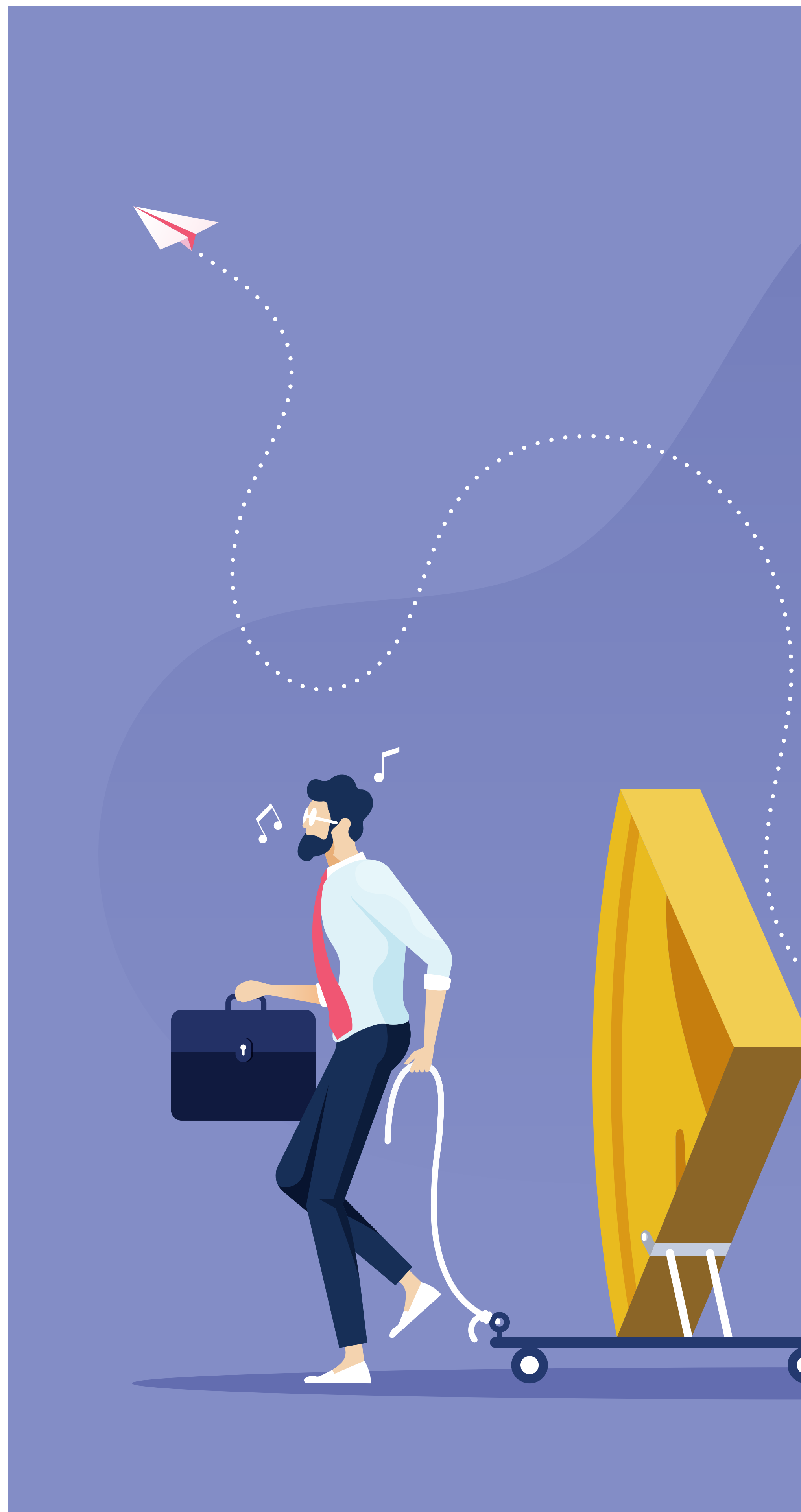
Once the cap is reached, the contributions may be stopped or continue as Roth deferrals. The first four withdrawals from these accounts are not subject to fees or taxes.

If a plan matches these deferrals, it must count contributions to the emergency savings account in the same way for the purposes of the match. Upon termination or separation of service, the account balance may be taken as a distribution, rolled into a Roth, or rolled into an IRA.

"While scheduled for 2024, this is a big, complex, high-impact provision that will have lengthy Treasury and DOL regulations, so implementation will be tricky," Group Plan Systems Managing Partner Pete Swisher said. "2024 is therefore probably optimistic."

Student Loan Matching Contributions (2024)—O

Acknowledgiing the enormity of the country's $1.75 trillion in outstanding student loan debt and its likely impact on retirement savings,



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SECURE 2.0 permits employers to match student loan repayments under 401(k), 403(b), SIMPLE, and 457(b) plans as if those payments were elective deferrals to the plan. It's intended to help employees who may not be able to save for retirement because they are overwhelmed with student debt and missing out on available matching contributions for retirement plans.

Reish explained that a plan must treat the Qualified Student Loan Payment (QSLP) matches the same as matches on participant deferrals, and an employer can rely on employee certification of payment.

Additionally, a plan may test the matching contributions as a part of its general discrimination testing or as a separate group consisting solely of those receiving matches as a result of payments on QSLPs. Other than for qualification testing, student loan repayments are not treated as contributions to the plan.

While many applauded the provision's inclusion in SECURE 2.0, OneDigital Senior Vice President of the Retirement + Wealth Jania Stout is less enthusiastic.

"I'm not excited about the student loan match part just because I'm a fan of a student loan program being a standalone plan, not being commingled into the 401(k)," she said. "If you're going to do a student loan program, do it right. I don't think the matching inside the 401(k) is the right way to do it."

Easier Access to Funds (2024)—O

The law allows one penalty-free distribution per year up to $1,000, with the option to repay the distribution within three years. No further emergency distribution would be permissible during the three-year repayment period unless a re-contribution is made. An exemption from the 10% penalty applies, and the plan may rely on participant self-certification of the hardship.

Plans may also permit a withdrawal in the case of an eligible distribution to a domestic abuse victim. The amount available is the lesser of $10,000 (indexed to inflation) or 50% of the account balance. It applies to plans that are not subject to IRC Section 417. The qualified withdrawal is exempt from the 10% penalty. Subject to certain conditions, the funds may be re-contributed to the applicable eligible retirement plan.

"What I'm most excited about is the emergency savings/sidecar along with the $1,000 penalty-free access to savings," Clark said. "I've been working with clients that are going to combine that, along with the student loan [matching contributions], and really design an aggressive approach to helping Main Street avoid the financial pitfalls and fees that come with average daily working-class living. How many tens and hundreds of billions of dollars

are wasted on unnecessary fees, interest, and stuff like that?"

Auto Portability (2024)—M

Most advisors agree that rolling over a retirement plan account should be much easier when a worker changes jobs. The Employee Benefit Research Institute (EBRI) finds that job-switching Americans lose $92 billion in retirement savings yearly to from premature cash-outs. It's mainly seen in workers with less than $5,000 in their accounts.

EBRI further notes widespread auto-portability adoption could save 67 million Black and minority workers $619 billion, and 42 million female workers of all ethnicities could save $365 billion.

It's why portability is the next piece in the auto-revolution (enrollment, deferral, escalation), a concept (process) that Retirement Clearinghouse has advocated for some time. Under current law, an employer is permitted to distribute a participant's account balance without participant consent if the balance is under $5,000 (an amount increased to $7,000 in 2024 under SECURE 2.0) and the balance is immediately distributable (e.g., after termination of employment). Current law also requires an employer to roll this distribution into a default IRA if the account balance is at least $1,000 and the participant does not elect otherwise.

SECURE 2.0 permits a retirement plan service provider to provide employer plans with automatic portability services. Such services involve automatically transferring a participant's default IRA (established in connection with a distribution from a former employer's plan) into the participant's new employer's retirement plan unless the participant elects otherwise.

Roth Provisions (2024)—M, O

Catch-up contributions under a 401(k), 403(b), or governmental 457(b) plan must be designated Roth contributions for participants with wages greater than $$145,000 (indexed to inflation) in the prior year that the contribution is made. For participants with wages less than, or equal to, $145,000, plans must have a Roth option for the catch-up contribution.

It's important to note that the American Retirement Association recently identified a significant technical error in this section that will likely need a technical correction. Specifically, according to wording in the legislation, beginning in 2024, no participant can make catch-up contributions (pre-tax or Roth).

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"IF YOU LOOK OUT FIVE YEARS FROM NOW, WE'LL BEGIN TO VIEW AUTOMATICALLY ENROLLED AND AUTOMATIC [ESCALATION] PLANS AS THE NORM. IT'LL BE THE ODD PLAN THAT DOESN'T AUTOMATICALLY ENROLL."

An additional Roth provision in the legislation allows for tax and penalty-free rollovers from 529 college savings accounts to Roth IRAs, under certain conditions. Beneficiaries of 529 accounts can roll over up to $35,000 as a lifetime limit. Subject to Roth IRA annual contribution limits, the 529 accounts must have been open for over 15 years.

Long-Term Part-Time Workers (2025)—M

The 2019 SECURE Act required retirement plan eligibility for long-term, part-time workers. SECURE 2.0 builds upon it by requiring that part-time employees who work at least 500 hours a year for two years be eligible to make employee contributions to an employer's defined contribution retirement plan.

It also provides that pre-2021 service is disregarded for vesting purposes. While effective in plan year 2025, the vesting change and top-heavy exemption fix are effective as if included in the enactment of section 112 of the SECURE Act.

It also extends the long-term part-time coverage rules to 403(b) plans subject to ERISA.

Saver's Match (2027)—O

The saver match is now a match of 50% of up to $2,000 in IRA or retirement plan contributions (less the distributions to a participant or spouse if married, filing jointly in the past three years, plus the period before the return is filed), irrespective of tax liability. The match phases out between $41,000 and $71,000 in the case of joint returns ($20,500 to $35,500 for single and married filing separately; $30,750 to $53,250 for head of household).

Under SECURE 2.0, thresholds are indexed to inflation after 2027. The Saver's Match must go into a retirement vehicle (workplace retirement plan or IRA) unless the match is less than $100. The contribution and match are treated as elective deferral (but don't count toward contribution limits). It's subject to distribution restrictions applicable to deferrals, except that it cannot be withdrawn for hardships.

Detailed rules exist on recapturing early distributions (within the prior two years). They involve separate accounting within the plan because it is not included in top-heavy and special distribution rules.

"What's interesting and gives me a little bit of pause [about the Saver's Match] is how it will be implemented because, essentially, the government is expected to deposit this money into employee accounts," Garcia said. "That will be interesting, but they have a few years to figure it out. It also helps those with lower income and those who don't generally save as much."

Retirement Distributions (2022, 2023)—M

Finally, SECURE 2.0 includes several retirement income provisions, mainly related to required minimum distributions (RMD) that are either retroactively enacted or implemented this year.

The required beginning date for RMDs is age 73, beginning in 2023, and age 75, beginning in 2033. The hard cut-off is based on birthday (age 72 before 2023 equals age 72; if the participant turns 73 before 2033, the RMD age is 73; if they turn 74 after 2032, the RMD age is 75).

Another distribution provision – and one largely overlooked by many – is that individuals can now buy Qualifying Longevity Annuity Contracts (QLAC) to satisfy their RMD requirements up to $200,000 (indexed to inflation after 2024).

There is also a modification in the calculation for partial RMD annuitization. Suppose a tax-preferred retirement account also holds an annuity. In that case, current law requires that the account be bifurcated between the portion of the account holding the annuity and the rest of the account for purposes of applying the RMD rules. This treatment may result in higher minimum distributions than would have been required if the account did not hold an annuity. The provision permits the account owner to elect to aggregate distributions from both portions of the account to determine minimum distributions.

SECURE 2.0 also removes RMD requirements for certain life annuities and reduces the excise tax for failure to take a required minimum distribution (RMD) to 25% from 50%, and further reduces the excise tax to 10% for taxpayers who take the required RMD before an IRS audit or (if earlier) the second year after the year in which the excise tax is imposed.

Despite the changes, Reish is unimpressed with the law's retirement income features overall.

"Still unresolved by Congress is what happens when the money comes out of the plan, and people live for another 20 or 30 years," he concluded. "They addressed how we can increase deferrals and encourage plan sponsorship, but I don't think they addressed the biggest unanswered question: what happens when somebody retires? There's a little bit about annuities, but nothing that says, 'Hey, annuities got it covered.' SECURE 1.0 was more significant in that regard because of the insurance-company safe harbor." NNTM

THE WHAT'S AND WHEN'S OF SECURE 2.0

There are a LOT of retirement provisions in the SECURE 2.0 Act of 2022 - and we've got a new resource - a list of which ones will take effect when.

The Government Affairs team here has developed this table providing descriptions and effective dates for the key provisions contained in the SECURE 2.0 Act of 2022, which was enacted Dec. 29, 2022, as part of the Consolidated Appropriations Act, 2023 (P.L. 117-328).

Dec. 29, 2022, will now serve as the date of enactment (DOE), which matters as several provisions become effective immediately, while others become effective in 2023 or later years.

Our chart is organized in the order the provisions become effective, starting with those already in effect or that have retroactive effective dates. In addition, PYB stands for "plan years beginning," and TYB stands for "taxable years beginning." Note that this table is not all the law's provisions, but it does include the most significant ones related to retirement.

SECURE 2.0 Section	Provision	Description	General Effective Date
501	SECURE Act Technical Corrections	Amends SECURE section 103 (adds notice requirement to 401(m) for a QACA with matching contributions); SECURE section 112 (can exclude LTPT from ACP test and this adds SH and QACA); in LTPT changes "arrangement" to "plan" (no effect); in LTPT minor correction to EE going to full-time); SECURE 116 (modifies 4973(b) excise tax to exclude from tax nondeductible difficulty of care payments); Clerical amendments fix QBADs and incorrect reference for 403(b), adjust references for requirements for plans that put safe harbor in other plan.	2020
111	Tax Credit: Small Employer Pension Plan Start-up Credit for Adopting MEP	Clarifies that the start-up credit is available if an employer is adoping its first plan by joining an existing MEP.	2020, TYB
331	Natural Disasters	Provides permanent rules relating to the use of retirement funds in the case of qualified disaster. Distributions are limited to $22,000 per disaster (rather than the usual $100K). May be repaid in 3-year period after distributions. Income inclusion spread over 3 years. Additionally, amounts distributed prior to the disaster to purchase a home would be permitted to be recontributed, and an employer would be permitted to provide for a larger amount be borrowed from a plan by affected individuals and for additional time for repayment of plan loans owed by affected individuals.	2021

Provisions Starting in 2022			
122	Unclaimed Savers Bond	Amend USC Title 31 to require Treasury to share certain information relating to the registered owners of matured and unredeemed savings bonds with the States to enable the States to locate the owners in accordance with the States' standards for recovery of abandoned property.	2022
128	403(b): Allowed to Invest in CITs	Allows employers with 403(b) plans, including public schools and tax-exempt organizations, to structure their retirement plans as collective investment trusts. **NOTE:** the proposal is applicable to amounts invested after enactment-but practically not (yet) available under legislation to address securities law.	2022
202	RMDs: Qualifying Longevity Annuity Contracts (QLACs) Modifications	Allows individuals to buy QLACs to satisfy all of their RMD requirement up to $200,000 (indexed after 2024). The current cap applicable to QLACs is the lesser of 25% of the account balance or $125,000. Clarifies that survivor benefits may be paid in the case of divorce and permits up to 90-day free-look period. Good faith reliance prior to regulations.	2022
204	RMDs: Modification in Calculation for Partial Annuitiziation	If a tax-preferred retirement account also holds an annuity, present law requires that the account be bifurcated between the portion of the account holding the annuity and the rest of the account for purposes of applying the RMD rules. This treatment may result in higher minimum distributions than would have been required if the account did not hold an annuity. The provision would permit the account owner to elect to aggregate distributions from both portions of the account for purposes of determining minimum distributions. Good faith reliance until regulations issued.	2022
301	EPCRS: Recovery of Retirement Plan Overpayments	Restricts plan sponsors from recovering certain excess payments from a participant after a three-year period when the individual did not cause the overpayment.	2022
305	EPCRS: Expansion	Expands EPCRS to allow self-correction of inadvertent significant plan errors without deadline (as long as before examination and within a reasonable period after discovery). Self-corrected loans treated as meeting requirements of VFCP. DOL may impose reporting. Waiver of 60-day rollover for reasons beyond control of account owner. It also allows the IRS to waive the excise tax for RMDs when an IRA owner self-corrects the error within 180 days.	2022
308	Public Safety/ Military: Firefighter Distributions	Expands the age-50 exception for qualified public safety employees to apply to distributions from a qualified retirement plan or section 403(b) plan to an employee who provides firefighting services.	2022
311	Distributions: Repayment of QBAD Limited to 3 years	Limits recontribution of qualified birth or adoption distribution (QBAD) to the three-year period beginning on the day after the distribution date. For QBAD already made, deadline is 12-31-2025.	2022
313	IRAs: Tax Penalties Statute of Limitations Clarification	Starts the statute of limitations on assessments on IRA penalties when the taxpayer files his or her individual tax return.	2022
326	Distributions: Terminally Ill Exemption	Provides an exception to the 10% early distribution tax for distribution to a terminally ill individual. Must provide evidence required by plan administrator. May be repaid.	2022
329	Public Safety/ Military: PS Officers with 25 years of Service Eligible for 10% Penalty Exemption	Extend the exception from 10% penalty to public safety officers with at least 25 years of service with the employer sponsoring the plan (current exemption is age 50 regardless of service).	2022

330	Public SafetyMilitary: Corrections Officers Eligible for 10% Penalty Exemption	Extends the public safety officer exception to the 10% early distribution tax to corrections officers who are employees of state and local governments. Effective after date of enactment.	2022
333	IRAs: Elimination of Penalty	Exempts excess contributions to IRA (and earnings) that are timely returned from the 10% tax on early distributions.	2022
335	DB: Mortality Tables	Generally requires that for purposes of the minimum funding rules, a pension plan is not required to assume mortality improvements at any age greater than 0.78%. Effective after date of enactment.	2022
345	Group of Plans (GoPs)	Any 103(a)(3)(C) audit applies only to large plans.	2022
604	Optional Treatment of ER Contributions as Roth contributions	401(a) plan, 403(b) plan, or a governmental 457(b) plan may permit an employee to designate matching or nonelective contributions as designated Roth contributions.	2022
606	DB: 401(h) Accounts	Extends the sunset for using assets from an overfunded pension plan to pay retiree health and life insurance benefits. The sunset would be 2025 and this extends it to 2032; and it permits transfers to pay retiree health and life insurance benefits provided the transfer is no more than 1.75% of plan assets and the plan is at least 110% funded. Effective after date of enactment.	2022
Provisions Starting in 2023			
107	RMDs: New Required Beginning Dates	The required beginning date for RMDs is age 73 beginning in 2023, and age 75 beginning in 2033. Hard cut-off; based on birthday (age 72 before 2023 = age 72; turn age 73 before 2033 = age 73; age 74 after 2032 = age 75).	2023
201	RMDs: Remove RMD Requirements for Certain Life Annuities	Allows individuals to satisfy the RMD requirements by purchasing a fixed annuity with a circumscribed set of features, such as increasing no more than 5% per year or providing for a death benefit equal to the amounts paid for the annuity minus prior payments.	2023
302	RMDs: Reduction in Retirement Plan Excise Taxes	Reduces the excise tax for failure to take an RMD to 25% from 50%, and further reduces the excise tax to 10% for taxpayers who take the required RMD before an IRS audit or (if earlier) the second year after the year in which the excise tax is imposed.	2023
105	PEP: Pooled Employer Plans (PEP) Modification	Permits PEP to designate a named fiduciary (other than an employer in the plan) to be responsible for collecting contributions. Other fiduciary required to implement written contribution collection procedures that are reasonable, diligent, and systematic. Prior to change, duty to collect and hold assets had to be a trustee approved under 408(a)(2).	2023, PYB
106	403(b): MEPs	403(b) plans, other than church plans, may form MEPs. No inference for church plans. Provides unified plan relief if MEP satisfies requirements similar to 413(e) (the PEP rules). Governmental plan gets relief even if commonality requirements are not met. Treasury in consultation with DOL must provide education and outreach on fiduciary duties.	2023, PYB
113	401(k)s: Small Immediate Financial Incentives for Contributing to a Retirement Plan	Allows de minimis financial incentives in 401(k)s and 403(b)s for employees "who elect to have [deferrals made]." Cannot be paid for by the plan. De mimimis not defined.	2023, PYB
312	Distributions: EE Certification of Deemed Hardship Conditions	In determining whether a distribution is due to an employee hardship, plan administrator of a 401(k), 403(b), or 457(b) plan may rely on the employee's certification that the distribution is on account of an eligible hardship/ emergency, not in excess of amount needed, and no alternative means to satisfy need. Treasury may restrict in regs for actual knowledge.	2023, PYB

317	401(k): Retroactive First-year Elective Deferrals for Sole Proprietors	Sole owner of an unincorporated trade or business, who is the only employee of such trade or business, may treat any elective deferral to a 401(k) plan made before the tax return due date (determined without regard to any extensions) as having been made before the end of the plan's first plan year. Applies only to the first plan year in which the section 401(k) plan is established.	2023, PYB
320	R&D: Eliminate Plan Requirements for Unenrolled Participants	Allows plans to provide much more limited information to employees who are not contributing to a plan and that have no balance in the plan. Must have provided an SPD, any required eligibility notices, and an annual notice.	2023, PYB
348	DB: Cash Balance Testing	For 411(b) accrual rule tests, may use a reasonable projection of interest crediting rates; capped at 6%.	2023, PYB
102	Tax Credit: Small Employer Pension Plan Start-up Credit Modification	Establishes a new credit and expands an existing credit. Startup credit increased to 100% for companies with 50 or fewer employees. The existing cap of $5,000 per employer is retained. The new credit offsets up to $1,000 of employer contributions per employee in the first year, phased down gradually over 5 years. Applies to companies with 100 or fewer employees, however, it is phased out for those with more than 50 employees. No credit for contributions to any employee making more than $100k (indexed after 2023). NOTE: no deduction for employer contributions qualifying for credit.	2023, TYB
112	Public Safety/ Military: Small Employer Retirement Plan Eligibility Credit for Military Spouses	Tax credit to small employers (using SEP definition of under 100 EEs) who offer nonhighly compensated employee (NHCE) military spouses a retirement plan with enhanced eligibility rules and an accelerated vesting schedule. The credit of up to $500 per military spouse would apply for first 3 years of participation ($200 for eligibility; $300 for ER contributions).	2023, TYB
306	457(b): Eliminate "First Day of the Month" Requirement for Governmental Plans	Plan may permit participants in 457(b) plans to change their contribution election at any time.	2023, TYB
307	Distributions: Qualified Charitable Distribution Rule Modifications	Indexes the annual $100,000 exclusion limit after 2022. Allows a one-time $50,000 distribution from an IRA to a split-interest entity.	2023, TYB
322	IRAs: Limiting Cessation of IRA Treatment to Portion of Account Involved in a PT	The provision modifies the disqualification rule that applies when an IRA owner or beneficiary engages in a prohibited transaction so that only the IRA that is used in the prohibited transaction is treated as distributed to the individual.	2023, TYB
601	SIMPLE and SEP: Roth Permitted	Under the provision, a SEP and a SIMPLE IRA are permitted to be designated as Roth IRAs.	2023, TYB

You can find the complete table online at https://www.napa-net.org/news-info/key-secure-20-act-provisions-and-effective-dates.