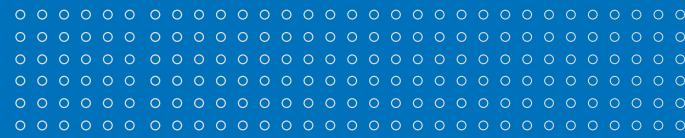


Capitol Connection



Quarterly Update | 3rd Quarter 2023

Your Source for Legislative and Regulatory News Affecting Retirement Plans

Congress Not Done with SECURE 2.0

The SECURE 2.0 Act of 2022 brought major changes to the rules for retirement plans after three years of proposals, industry input, and negotiations among legislators. Now, the onus is on the Department of Labor (DOL) and the Treasury Department/IRS to draft regulations to interpret the more than 90 provisions included in the law. But Congress isn't quite done with SECURE 2.0 just yet. Lawmakers recently acknowledged minor drafting errors in the SECURE 2.0 legislation and provided clarification on the ambiguities caused by the errors. Lawmakers have also recently voiced their opinion on which provisions the DOL should provide guidance on first.



Legislative Fixes and Clarifications

Several members of the legislative committees involved in drafting SECURE 2.0 recently sent a letter to Treasury Secretary Janet Yellen and IRS Commissioner Daniel Werfel to address certain questions raised by the drafting errors. In addition to providing clarification on the legislative intent of those provisions, the letter also confirms that Congress will introduce technical corrections legislation to fix the errors.

One of the provisions addressed is the new mandate (effective in 2024) for participants who earned more than \$145,000 from their employer in the prior year to make after-tax Roth catch-up contributions if they choose to make catch-up contributions. The letter clarifies that other participants may be permitted to make catch-up contributions on either a pre-tax or a Roth basis, and, most importantly, that Congress did not intend to eliminate catch-up contributions beginning in 2024. That drafting error will be fixed with corrective legislation.

Another necessary fix will clarify how the age increase for starting required minimum distributions (RMDs) will apply in 2033. SECURE 2.0 raises the RMD starting age in 2023 to age 73 and in 2033 to age 75. But a typo in the legislative text resulted in applying both starting ages to retirement savers born in 1959. The letter clarifies that the age 75 requirement will apply to those who do not turn age 73 before 2033. This means anyone born in 1960 or later will begin taking RMDs at age 75.

IN THIS ISSUE

Congress Not Done with SECURE 2.0 p. 1-2

Reminders and Updates for Plan Force-Out Provisions p. 3

Making Sense of All the New Distribution Options p. 4-5



Congress Not Done with SECURE 2.0 – *continued*

The letter also clarifies that the new tax credit for employer contributions available to small employers is meant to be in addition to the plan start-up tax credit, so that eligible businesses may claim the maximum credit under each provision. Finally, the letter indicates that the upcoming corrective legislation may include other provisions from SECURE 2.0 that were not addressed in the letter.

[Source: Congress of the United States Letter to Secretary of Treasury and Commissioner of IRS, May 23, 2023](#)

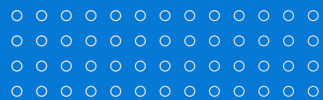
Priority Wish List

Senators on the Health, Education, Labor, and Pensions (HELP) Committee recently sent a letter to the DOL, requesting that the agency act “effectively and expeditiously” to issue guidance on six specific provisions of SECURE 2.0:

1. Start Employee Ownership Initiative to promote employee ownership and issue guidance on employee stock ownership plan valuation standards.
2. Make changes to annual defined benefit plan funding notices.
3. Draft guidance on Pension-Linked Emergency Savings Accounts (sidecar Roth savings accounts allowing up to \$2,500 contributions).
4. Study/report on the impact of inflation on retirement savings (which was due by the end of March 2023 under the SECURE 2.0 provision).
5. Review current guidance on pension risk transfers to determine whether amendments are needed.
6. Work with the IRS to allow plans to consolidate certain required notices into a single notice. (The provision of SECURE 2.0 named the Qualified Default Investment Alternative (QDIA) notice, Safe Harbor 401(k) notice, Auto Enrollment Safe Harbor notice, and the Permissive Withdrawal notice and sent a deadline of the end of 2024).

[Source: Senate Committee on Health, Education, Labor and Pensions \(HELP\) Letter to Department of Labor, May 30, 2023](#)





Reminders and Updates for Plan Force-out Provisions

A 401(k) plan may be designed to force small balance accounts out of the plan after a participant stops working for the employer sponsoring the plan and fails to provide direction regarding the distribution of their plan account. These involuntary distributions are referred to as force-outs or mandatory cashouts. Force-outs between \$1,000 and \$5,000 must be automatically rolled over to an IRA on behalf of the former employee. These are referred to as “automatic rollovers” to automatic IRAs or Safe Harbor IRAs. Balances of \$1,000 or less may either be rolled over or cashed out and sent to the participant, depending on the terms in the plan document. Many plans choose to roll over all force-outs to avoid dealing with the compliance challenges of small distribution checks that go uncashed.

SECURE 2.0 increases the maximum account balance that may be forced-out to \$7,000, beginning in 2024. Depending on the plan’s force-out provision, the higher limit may apply automatically, or the plan sponsor may need to adopt the increased limit. If a plan doesn’t currently have a force-out provision, the plan sponsor would need to adopt a force-out provision and select the dollar limit.

Fiduciary Considerations

The selection of an automatic rollover provider or IRA custodian to receive automatic rollovers from the plan is a fiduciary duty for the plan sponsor. Plan sponsors should conduct an independent search for providers to compare the services and fees associated with the rollover and Safe Harbor IRA to make a fiduciary determination as to which provider is the best choice for their plan. Documenting this decision-making process for the fiduciary file will help plan sponsors prove their diligence process in selecting a provider.

To comply with the automatic rollover rules, the plan sponsor must have a written agreement with the IRA custodian that directs the custodian to open an IRA for each terminated employee for whom an automatic rollover is accepted and that includes specific elements to protect the assets being rolled over, including Safe Harbor IRA investments and fees.

It’s also important that if a plan has a force-out provision, plan sponsors comply with the terms of their plan document and force out account balances that meet the plan’s requirements to avoid operational errors. The document should specify the frequency for processing force-outs (e.g., quarterly), but the timing should be at least annually.

If a plan sponsor meets the safe harbor requirements for automatic rollovers under DOL regulations, the plan sponsor is released from fiduciary responsibility for those assets when they are deposited into a Safe Harbor IRA on behalf of the participant. The plan sponsor does not have an ongoing responsibility to monitor the provider or search for participants. The Safe Harbor IRA custodian will conduct searches for individuals for whom it holds Safe Harbor IRAs.

More SECURE 2.0 Changes Affecting Force-Outs

SECURE 2.0 creates a new prohibited transaction exemption that allows an “Automatic Portability Provider” to collect fees for automatic portability transactions, beginning December 29, 2023. An “automatic portability transaction” is a rollover from a Safe Harbor IRA established for a missing/nonresponsive participant to that participant’s new employer plan when the Automatic Portability Provider identifies a new employer plan for the individual. Plan sponsors must meet their ERISA fiduciary duties if choosing to work with an Automatic Portability Provider and must notify plan participants of the arrangement.



Another development in this area coming out of SECURE 2.0 is an online Retirement Savings Lost and Found database to be created by the DOL. Participants may use this database to search for their “lost” accounts, including those rolled over to Safe Harbor IRAs. Plan sponsors will provide information to the DOL for this database on Form 8955-SSA, which is typically filed with Form 5500. This database is scheduled to be available by the end of 2024.

Making Sense of All the New Distribution Options

SECURE 2.0 created several new distribution options to help plan participants access their retirement savings while they're still working. Most of the new provisions are optional for plan sponsors to adopt, but each has different eligibility requirements, dollar amounts and timing. Most are tied to a specific event causing a financial hardship for individuals, but these new options are in addition to and do not replace the traditional "hardship" distribution most 401(k) plans have allowed over the years.

IRS guidance is needed to provide operational and reporting details for each new distribution option, but for now this chart may be helpful in clarifying the different options available.

SECURE 2.0 Distribution Options (Or Clarification)

Reason	Distribution Triggering Event for Current Employee	Optional Plan Feature to Adopt	Dollar Limit	Timing Requirements	Exception to 10% Tax Prior to 59½	Repayments Allowed	Year Effective
Birth or Adoption	Yes	Yes	\$5,000 per child	Within 1 year of birth or adoption	Yes	Yes, within 3 years (or 12/31/2025 for distributions taken prior to 2023)	2020
Qualified Disaster	Yes	Yes	\$22,000	Within 179 days of federal disaster declaration	Yes	Taxation may be spread over 3 years, repayment within 3 years	Retroactive to 1/26/2021
Terminal Illness	No	Repayments must be accepted if plan accepts rollovers	No	No restrictions on distribution timing	Yes	Yes, within 3 years	2023
Domestic Abuse Victim	Yes	Yes	50% of balance up to \$10,000	Within 1 year of event	Yes	Yes, within 3 years	2024
Emergency Withdrawal	Yes	Yes	\$1,000	Once per year, once every 3 years if not repaid or additional deferrals made	Yes	Yes, within 3 years	2024
In-Plan Emergency Savings Accounts	Yes	Yes	\$2,500 plus earning in account	Distributions must be allowed at least monthly	Yes	New contributions allowed if less than \$2,500 in amount	2024

Making Sense of All the New Distribution Options – *continued*

Considerations When Adding New Plan Features

Plan sponsors considering adding any of the new plan design features created by SECURE 2.0 may be overwhelmed by the sheer number of choices – not to mention by the potential new administrative requirements for maintaining compliance. To help focus the decision-making process and prioritize potential new features, plan sponsors may want to consider the following points:

- Overall objectives for the company’s retirement plan
 - For example, is the primary goal to provide a competitive employee benefits package and attract new employees, or is it to limit the distribution of plan assets before retirement to help ensure participants meet their retirement savings goals?
- Plan metrics that may point to areas of the plan that need improvement or don’t align with business objectives for the plan
 - For example, what is the average plan balance, the average number of employees receiving the full employer match, and the percentage of employees taking hardship distributions?
- Employee demographics and interest in certain plan features
 - For example, how many employees have student loans and what percentage of employees are cashing out their account balances upon termination?
- Plan recordkeeper, TPA, and financial advisor support
 - For example, can a provider help the plan sponsor identify the administrative and compliance requirements for a specific feature, project the potential impact of the adoption of a specific feature, or assist with educating employees?



This material is for general information only and is not intended to provide specific advice or recommendations for any individual. There is no assurance that the views or strategies discussed are suitable for all investors or will yield positive outcomes. Investing involves risks including possible loss of principal. Any economic forecasts set forth may not develop as predicted and are subject to change.

HUB Retirement and Private Wealth representatives may be either HUB employees or independent contractors and may be Registered Representatives of and offer Securities and Advisory services through various Broker Dealers and Registered Investment Advisers; which may or may not be affiliated with HUB International. Insurance services are offered through HUB International and several other appropriately licensed and registered HUB affiliates. Consult your HUB representative for additional information about the provision of specific securities, investment advisory, and insurance services.

RPW-291-0623