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Qualified Retirement Plan Consulting and Administration

House Passes SECURE Act 2.0

Important changes to the design of 401(k) and similar defined contribution retirement plans are again moving forward in Congress. On March 29, the House overwhelmingly approved the bipartisan Securing a Strong Retirement Act by a vote of 414 to 5.

However, the Senate is considering its own version of SECURE Act 2.0, the Retirement Security and Savings Act, which shares many similar provisions as the House bill. However, as the Senate legislative process moves forward, lawmakers may try to incorporate other features proposed in separate House and Senate bills.

There are two important issues to realize. First, these changes in pension law may never be signed into law. Secondly, there is no action to be taken at this time.

Mandatory Automatic Enrollment/Escalation

SECURE Act 2.0 would require employers that establish new defined contribution plans to automatically enroll newly hired employees, when eligible, in the plan at a pretax contribution level of 3 percent of the employee's pay. This level would increase annually by 1 percentage point up to at least 10 percent but not more than 15 percent of the employee's pay. Employees could affirmatively elect a different contribution. If a participant has not made an investment election, contributions are defaulted into a qualified default investment alternative (QDIA), generally, a target date or balanced fund or a managed account.

These provisions apply to new 401(k) and 403(b) plans established after the legislation's enactment date, as current plans would be grandfathered. There is also an exception for small businesses with 10 or fewer employees, those in business for less than three years, church plans and governmental plans.

Increase and 'Roth-ify' Catch-Up Contributions

SECURE Act 2.0 keeps the existing 401(k) and 403(b) plan catch-up contribution limits for those age 50 and older but increases the annual catch-up amount to $10,000 for participants ages 62 through 64, starting in 2024. This higher limit would also be indexed for inflation. Under current law, the 2022 limit on catch-up contributions for employees who have reached age 50 is $6,500, indexed annually for inflation, for a total contribution limit of $27,000.

Raising the catch-up limit for older workers is likely to mostly benefit highly compensated employees who can afford to contribute beyond the present maximum.

SECURE Act 2.0 also provides that, starting in 2023, all catch-up contributions to employer-sponsored plans must be made to Roth accounts, allowing the government to tax these dollars sooner. Roth account contributions are made with post-tax dollars that can be withdrawn tax-free after retirement.

Allow Roth Matching Contributions

Currently, employer matching contributions must be paid into employees' pretax 401(k) accounts. Under SECURE Act 2.0, starting in 2023 plan sponsors would have the option of permitting employees to elect that some or all of their matching contributions be treated as Roth contributions for 401(k) plans. Employer matching contributions designated as Roth contributions would not be excluded from employees' gross taxable income.

Delay Mandatory Distributions

The original SECURE Act increased the age at which participants in employer-sponsored defined contribution plans and traditional (non-Roth) individual retirement accounts must begin taking required minimum distributions (RMDs) to 72, up from 70-1/2.

SECURE Act 2.0 further increases the age for starting RMDs to:

- 73 starting in 2023 (for individuals who reach age 72 after Dec. 31, 2022, and age 73 before Jan. 1, 2030)
- 74 starting in 2030 (for individuals who reach age 73 after Dec. 31, 2029, and age 74 before Jan. 1, 2033)
- 75 starting in 2033 (for individuals who reach age 74 after Dec. 31, 2032)

Expedite Part-Time Workers' Participation

The original SECURE Act expanded eligibility for long-term, part-time workers to contribute to their employers' 401(k) plan. SECURE Act 2.0 "would expedite the addition of long-term, part-time workers as eligible participants" by shortening from three years to two years the measurement period for eligibility that starts in 2021.

Authorize Student Loan Matching

Employers' 401(k) plan matching contributions are traditionally based on plan participants' elective deferrals to their retirement accounts. While the IRS has opened the door to allowing employers to make 401(k) matching contributions based on employees' student loan payments—even if employees aren't making retirement contributions themselves—compliance concerns have remained due to the absence of authorizing legislation. SECURE Act 2.0 would provide a statutory basis for employers to adopt this feature. The matching contributions for student loan payments must vest under the same schedule as other matching contributions.

Additional Provisions

Among other key changes, SECURE Act 2.0 also would:

- **Create an online Retirement Savings Lost & Found Database** at the Department of Labor for workers and retirees to find "lost" retirement accounts left at former employers that may have gone out of business or merged with another organization.
- **Create a tax credit** of up to $1,000 per employee for small businesses that offer a savings plan.
- **Expand self-correction opportunities,** including for participant loan errors and employee elective deferral failures.
- **Increase public awareness of the Retirement Savings Contributions Credit** (also known as the saver's credit), which is available to low- and moderate-income workers.
- **Extend to 403(b) retirement plans** some of the design features of 401(k) plans.
- **Eliminate certain barriers to offering lifetime income annuities** as a retirement plan investment option.
- **Allow nonprofits to join together** to offer defined contribution multiemployer plans to their employees, as for-profit employers were allowed to do under the original SECURE Act