PLAN SPONSOR
Digest

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Your Challenge, Our Solutions™

SECURE 2.0 Act changes begin now

The SECURE 2.0 Act of 2022 passed into law on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023. With 92 provisions affecting retirement plans and IRAs, the changes made by SECURE 2.0 will have a long-lasting effect on retirement savings, in part because of the staggered effective dates ranging from 2023 to 2033. But if this legislation helps to bring about the intended outcomes, it will increase the number of employers (particularly small employers) offering retirement plans and, thus, help more employees save more for retirement.

The staggered effective dates give the Department of Labor (DOL) and Department of Treasury/IRS time to interpret the law changes and provide guidance on implementing the changes. This approach also gives plan sponsors time to understand the mandatory changes and evaluate whether they want to incorporate any of the new optional features, while plan providers are updating systems and operations.

Some of the optional changes 401(k) plan sponsors will be able to consider incorporating next year include matching contributions on student loan payments and adding Emergency Savings Accounts to their plans. Another upcoming change designed to increase participation will require new

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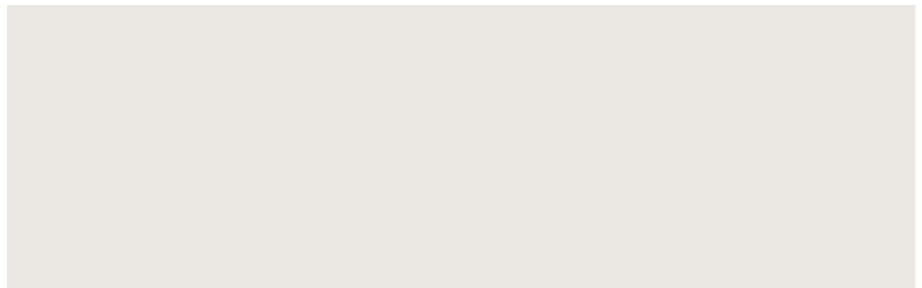

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401(k) plans to automatically enroll eligible employees into the plan and increase their deferral rates each year. This provision takes effect in 2025 and applies to new plans established on or after December 29, 2022.

Effective in 2023

For now, plan sponsors should be aware of the provisions effective in 2023 and ensure their plan is being operated in good faith with the new laws, until the detailed compliance requirements are issued. The provisions in the table at right are among the changes effective in 2023:

Stay in touch with your providers

Plan sponsors should contact their plan service providers for more information as to when certain plan features will be available and any procedural modifications plan sponsors must make to implement any changes.

Increase in RMD starting age	The age at which participants must begin taking required minimum distributions (RMDs) increases to 73 for participants who reach age 72 after December 31, 2022. The RMD age will increase to age 75 in 2033 for participants who turn 74 after December 31, 2032.
Roth treatment of employer contributions	401(a), 403(b) and governmental 457(b) plan sponsors may choose to allow participants to designate employer contributions as Roth contributions. These contributions must be vested when made and included in the participant's taxable income. NOTE: Watch for more information. Plan providers need guidance on how to implement this feature, including obtaining participant elections, timing of contributions and taxation, and tax withholding and reporting.
Financial incentives for participating	Plan sponsors may provide de minimis financial incentives (e.g., small balance gift cards) to employees who participate in a 401(k) or 403(b) plan. These incentives cannot be paid for with plan assets. NOTE: The monetary limit for this has not been defined.
Self-correction of plan errors	Plan sponsors may self-correct inadvertent failures under the IRS Employee Plans Compliance Resolution System (EPCRS) at any time without a submission to the IRS, regardless of whether the failure is significant or insignificant—unless the IRS identifies the failure first. NOTE: This provision is effective immediately, but the IRS has until December 2024 to update the EPCRS guidance for this change.
Employee self-certification of hardship	Plan administrators may rely on a participant's written self-certification that 1. they have a financial hardship that meets one of the safe harbor hardship events, 2. the requested dollar amount does not exceed their financial need, and 3. the participant has no other way to satisfy this need.
Qualified Birth or Adoption Distribution (QBOAD) pay back	The SECURE Act of 2019 created a new distribution trigger and 10% early distribution penalty exception for participants who take a QBOAD of up to $5,000 per child. Participants may repay these distributions to a plan or IRA, but no time frame was included in the 2019 legislation. SECURE 2.0 sets a three-year period for recontributions of QBOADs. Participants who took a QBOAD before December 29, 2022, have until December 31, 2025, to recontribute that QBOAD.
Increased plan start-up tax credit and new contribution tax credit	Under existing law, small employers (100 or fewer employees) may claim a tax credit for up to three years to offset 50% of the costs of adopting a new retirement plan. The applicable credit amount is $500–$5,000 per year, depending on the number of employees. Beginning in 2023, an employer with 1–50 employees may claim a credit for 100% of plan costs up to the $5,000 per year limit. An employer with 1–50 employees may also claim a tax credit to offset 100% of employer contributions (up to $1,000 per employee) for the first two years, 75% of contributions in year three, 50% of contributions in year four, and 25% of contributions in year five. The credit is phased out for employers with 51–100 employees. The contribution tax credit may not be claimed for employees whose income exceeds $100,000 for 2023.
New tax credit for employing military spouses	Small employers (100 or fewer employees) may claim a tax credit if they allow military spouse employees to 1. participate in the plan within two months of hire, 2. be eligible for any employer contribution they would otherwise be eligible for after two years of service, and 3. be 100% vested in those contributions. The military spouse employee cannot be a highly compensated employee. The credit is available for the military spouse's first three years of participation in the plan. The maximum dollar amount of the tax credit per year is $500, which is the sum of $200 per eligible military spouse and 100% of employer contributions up to $300.

SECURE 2.0 paves the way for matching student loan payments

Burdensome student loan debt is hindering many workers from saving for retirement and causing them to miss out on employer matching contributions. To help employees with student loan debt begin saving for retirement sooner or save more, SECURE 2.0 permits plan sponsors to treat employees' student loan payments as salary deferrals into a 401(k), 403(b), governmental 457(b) or SIMPLE IRA plan for purposes of calculating matching contributions for the employees. This is not an additional contribution given to those with student loan debt; it is another way for these employees to earn the same matching contribution as provided to employees who defer a portion of their salary into the employer's retirement plan. Now, employees can be eligible for that same matching contribution for making their student loan payments, even if they can't afford to also defer a portion of their paycheck into the plan. Plan sponsors may adopt this provision for plan years beginning on or after January 1, 2024.

Although further guidance is needed, the SECURE 2.0 legislation includes the following rules:

- A qualified student loan payment (QSLP) is defined as "a payment made by an employee in repayment of a qualified education loan . . . incurred by the employee to pay qualified higher education."
- Only QSLPs up to the 402(g) salary deferral limit (or the employee's salary if less), reduced by the amount of any actual deferrals made, may be considered for the QSLP match each year.
- Plan sponsors may rely on annual employee certifications as to the amount of QSLPs made for the year.
- Employees must otherwise be eligible to receive matching contributions in the plan to be able to receive a QSLP match.
- The QSLP match must be available to all employees who are eligible to receive a matching contribution on salary deferrals.
- The matching and vesting rates for QSLP matches must be the same as those that apply for matching contributions on employee salary deferrals.
- Employees receiving a QSLP match may be tested separately for nondiscrimination testing.

Additionally, SECURE 2.0 requires that QSLP matches must be made at least annually. Practically, an annual certification of loan payments and one corresponding annual match deposit may be the easiest process for both employees and employers. But forthcoming regulations are expected to address the issue of providing a QSLP match at a different frequency than is used for the salary deferral match (e.g., quarterly or annually instead of per payroll).

With the January 1, 2024, effective date looming, service providers will be adapting their systems and developing plan sponsor and participant education for this new plan feature. While the QSLP match is optional for plan sponsors, it's expected to be widely adopted as employers continue to enhance their recruiting efforts and compete for top talent, particularly in the industries that require a college or advanced degree.

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