Retirement Planning Issues: Where We Stand Now

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THE SECURE ACTS

BACKGROUND

- The SECURE Acts (original Act and SECURE 2.0) Made significant changes in Qualified Retirement Plans and IRAs.
- **SECURE** – "**S**etting **E**very **C**ommunity **U**p For **R**etirement **E**nhancement"
- The original SECURE Act was signed into law by President Donald Trump on December 20, 2019, as part of the "Further Consolidated Appropriations Act, 2020".
- The SECURE 2.0 Act was signed into law by President Joe Biden on December 29, 2022, as part of the "Consolidated Appropriations Act of 2023".

A QUICK REVIEW OF SECURE ACT 1.0

Background Summary

- Elimination of “stretch” provisions for non-spouse beneficiaries of inherited IRAs and other retirement plans.
  - 10-year stretch now applies for 2020 and beyond.
- Contributions to a traditional IRA can now be made past age 70½.
- Required minimum distributions (for 2020 through 2022) started at age 72 (was age 70½).
- Penalty-free distributions of up to $5,000 now allowed for:
  - Qualified births; and
  - Qualified adoptions.

Background Summary (cont.)

- Non-deductible IRA contributions can be made with certain foster care payments.
- Fellowship and Stipend Payments - Beginning in 2020, taxable non-tuition fellowship and stipend payments are included as compensation for IRA purposes.
- Medicaid Waiver Payments – that are excluded from income are treated as compensation for purposes of calculating the nondeductible contribution limits to defined contribution plans and IRAs.
    - Deductible contributions are not allowed based on Medicaid waiver payments.

Background Summary (cont.)

BIRTH & ADOPTION EXCEPTIONS

- Applies to distributions from IRAs and all Qualified Plans made during the one-year period beginning on the date on which a child of the individual is born or on which the legal adoption is finalized
- Eligible Adoptee:
  - Under the age of 18 or mentally incapable of self-support.
  - Cannot be the child of a spouse.
- In addition, such qualified birth or adoption distributions may be recontributed to an individual's applicable eligible retirement plans.

Background Summary (cont.)

POST-2019 DEATHS - BENEFICIARY DISTRIBUTIONS

- **Spouse Beneficiaries** – Rules are unchanged.
- **Non-spouse Beneficiaries** – Must distribute the entire inherited balance within 10 years counting from the year after owner’s death.
    - May take any amount in any year.

Background Summary (cont.)

POST-2019 DEATHS - BENEFICIARY DISTRIBUTIONS (cont.)

- **Exceptions**
  - **Child of Decedent** – The 10 years payout period does not begin running until the year after the child reaches the age of maturity (18 in most states). Distributions based on life expectancy are required up to age 18. (**Caution:** Does not apply to a grand child)
  - **Life Expectancy** - The following beneficiaries may withdraw over their life expectancy, beginning in the year after death.
    - Any person not more than 10 yrs. younger than the deceased.
    - A chronically ill beneficiary.
  - **Subsequent Beneficiary** - A subsequent beneficiary will have to distribute the balance of the account by the end of the 10th year after the year of the original beneficiary's death.

SECURE ACT 2.0

- On **December 23, 2022**, Congress passed the Securing a Strong Retirement Act of 2022 (Secure Act 2.0) as part of the Consolidated Appropriations Act of 2023.
- President Biden signed the legislation on **December 29, 2022**.

Mandatory Automatic Enrollment

- Requires 401(k) and 403(b) plans to automatically enroll participants in the respective plans upon becoming eligible (and the employees may opt out of coverage).
  - The initial auto enrollment amount is at least 3% but not more than 10%
  - Each year thereafter that amount is increased by 1% until it reaches at least 10%, but not more than 15%.
  - All current 401(k) and 403(b) plans in existence before the date of enactment of this Act are grandfathered (i.e., not required to have automatic enrollment).

Mandatory Automatic Enrollment (cont.)

- The following employers are exempt from the mandatory enrollment, including:
  - Small businesses with 10 or fewer employees,
  - SIMPLE Plans (within the meaning of section 401(k)(11)).
  - Been in business for less than three years,
  - Church Plans
  - Government Plans.

Effective Date: January 1, 2025

Small Business Pension Start-Up Costs

- IRC §45E provides for a nonrefundable income tax credit for the administrative and retirement education expenses for any small business that adopts a new qualified defined benefit or defined contribution plan, including:
  - 401(k) plans,
  - SIMPLE plans, or
  - Simplified employee pension ("SEP") plans).
- In addition to claiming the credit for the expenses for the year in which the plan becomes effective, the credit may also be claimed for the plan-related administrative and retirement-education expenses in the following two years.

Small Business Pension Start-Up Costs (cont.)

- The Secure 2.0 Act made the following changes:
  - **Eligible Employer**: Created a second category of employer (leaving the original 100 or less in place) that applies to 50 employees of less
  - **Credit Percentage**: Increased from 50% to 100% for the first year and per the table for years 1 through 5.
  - **Maximum Credit:** Increased from $500 to $1,000
  - The expenses related to an employee making wages more than $100,000 are not included.
  - The $100,000 is inflation adjusted in $5,000 amounts after 2023.

Effective Date: January 1, 2023

Changes to the Saver's Credit

- The Original Saver's Credit will be eliminated and will be replaced with a Federal retirement plan contribution.
- The match is 50 percent of IRA or retirement plan contributions up to $2,000 per individual.
- MAGI Phaseout:

MAGI PHASEOUT		
Filing Status	Phaseout Threshold	Fully Phased Out
Single, MFS	20,500	35,500
HH	30,750	53,250
MFJ, SS	41,000	71,000

- Phaseout inflation adjusted in $1,000 increments after 2027.

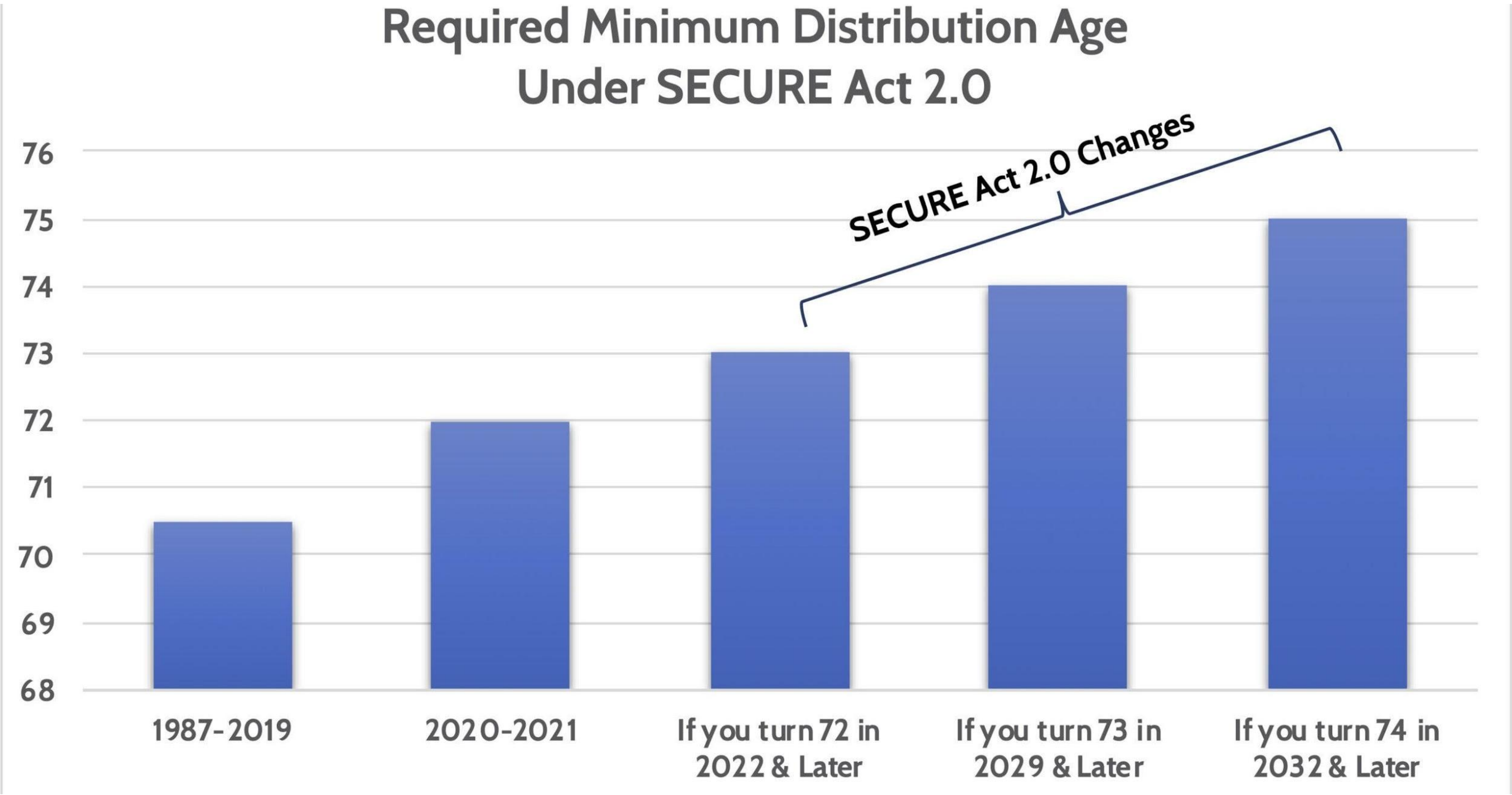
Effective Date: January 21, 2027

Mandatory Employer 403(b) Plans

- Allows 403(b) plans, which are generally sponsored by charities, educational institutions, and non-profits, to participate in Multiple Employer Plans (MEPs) and Pooled Employer Plans (PEPs).
- Includes relief from the “one bad apple” rule so that the violations of one employer do not affect the tax treatment of employees of compliant employers.
- Allows 403(b) plans to serve multiple employers.
- Excludes church plans.

Effective Date: January 1, 2023

Increase in Required Minimum Distribution (RMD) Age



Increase in RMD Age (cont.)

- Pushing back the age for RMDs is a neutral-to-positive change for most clients.
  - For individuals who already need to take distributions beyond their RMD level to support living expenses, the change is largely irrelevant.
  - For some clients, however, the change will be viewed as welcome news, as it may allow them to push off retirement-account income for a few more years in an effort to stave off higher Medicare Part B/D premiums and, perhaps, to have a few more years of tax-efficient Roth conversions.
  - Advisors should work closely with affected clients to determine the optimal approach.

Indexing IRA Age 50 Catch-Up

- Under current law, the limit on annual IRA contributions is increased by $1,000 (not indexed) for individuals who have attained age 50.
- Section 108 of the Act indexes the catch-up amount in $100 increments.

Effective Date: January 1, 2025

Higher Catch-Up Limit Ages 60 Thru 63

- Increases the catch-up limits to $5,000 for SIMPLE plans and $10,000 for other retirement plans for individuals who have attained ages 60, 61, 62 and 63. The increased amounts are indexed for inflation after 2025.
- Beginning in 2025:
  - Simple plan plus $3,500 age 50+ will become $5,000 or 150% of the dollar amount which will be in effect for 2025 for those age 60 thru 63.
  - 401(k), 403(b) plan plus $7,500 age 50+ will become $10,000 or 50% more than the regular catch-up amount in 2025 for ages 60 thru 63.

Effective Date: January 1, 2025

Added Nonelective SIMPLE Contributions

- Prior law required employers with SIMPLE plans to make employer contributions to employees of either 2% of compensation or 3% of employee elective deferral contributions.
- Section 116 of the Act permits an employer to make additional contributions to each employee of the plan in a uniform manner, provided that the contribution may not exceed the lesser of:
  - Up to 10% of compensation or
  - $5,000 (indexed after 2024).

Effective Date: January 1, 2024

Contribution Limits for SIMPLE Plans

- Under prior law, the annual contribution limit for employee elective deferral contributions to a SIMPLE IRA plan is $15,500 (2023) and the catch-up contribution limit beginning at age 50 is $3,500 (2023).

Contribution Limits for SIMPLE Plans (cont.)

- Under this new law for SIMPLE IRAs with:
  - 25 or Fewer Employees - Increases the annual deferral limit and the catch-up contribution at age 50 by 10%, as compared to the limit that would otherwise apply in the first year this change is effective.
  - 26 to 100 Employees - An employer with 26 to 100 employees would be permitted to provide higher deferral limits, but only if the employer either provides a:
    - 4% matching contribution or
    - 3% employer contribution.

Effective Date: January 1, 2024

Student Loan Payments

- Employees will be able to receive matching contributions by reason of repaying their student loan.
- Employers can make matching contributions under a 401(k) plan, 403(b) plan, SIMPLE IRA or 457(b) government plan with respect to "qualified student loan payments."
- A qualified student loan payment is broadly defined as any indebtedness incurred by the employee solely to pay qualified higher education expenses of the employee.

Student Loan Payments (cont.)

- For purposes of the nondiscrimination test applicable to elective contributions, this change permits a plan to test separately the employees who receive matching contributions on student loan repayments.
- Employer may rely upon the employee certification of student loan payment.

Effective Date: January 1, 2024

Small Employer Military Spouse Credit

- Small employers (no more than 100 employees earning more than $5,000 per year) are entitled to a tax credit with respect to their defined contribution plans if they:
  - Make military spouses immediately eligible for plan participation within two months of hire;
  - Upon plan eligibility, make the military spouse eligible for any matching or nonelective contribution that they would have been eligible for otherwise at 2 years of service; and
  - Make the military spouse 100 % immediately vested in all employer contributions.

Small Employer Military Spouse Credit (cont.)

- The tax credit equals the sum of:
  - $200 per military spouse, and
  - 100% of all employer contributions (up to $300) made on behalf of the military spouse.
- Results in a maximum tax credit of $500.
- This credit applies for 3 years with respect to each military spouse. It does NOT apply to highly compensated employees ($150,000 for 2023).
- An employer may rely on an employee’s certification that such employee’s spouse is a member of the uniformed services.

Effective Date: January 1, 2023

Financial Incentives for Contributing

- Under prior law, employers could provide matching contributions as a long-term incentive for employees to contribute to a 401(k) plan.
  - However, immediate financial incentives (like gift cards in small amounts) were prohibited even though individuals may be especially motivated by them to join their employers' retirement plans.
- The new law enables employers to offer de minimis financial incentives, not paid for with plan assets, such as low-dollar gift cards, to boost employee participation in workplace retirement plans.

Effective Date: January 1, 2023

Nanny SEP Contributions

- This new law permits employers of domestic employees (such as “nannies”, housekeepers, and personal aides) to provide retirement benefits for such employees under a Simplified Employee Pension (“SEP”).

Effective Date: January 1, 2023

Automatic Portability Transactions

- Under prior law, an employer was permitted to distribute a participant's account balance without participant consent if the balance is under $5,000 and the balance is immediately distributable (e.g., after a termination of employment).
- The prior law also requires an employer to roll over this distribution into a default IRA if the account balance is at least $1,000 and the participant does not affirmatively elect otherwise.

Automatic Portability Transactions (cont.)

- The new law permits a retirement plan service provider to provide employer plans with automatic portability services.
- Such services involve the automatic transfer of 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 affirmatively elects otherwise.

Effective Date: January 1, 2024

Starter 401(k) Plans

- Section 121 of the Act permits an employer that does not sponsor a retirement plan to offer a “Starter 401(k) Plan” (or safe harbor 403(b) plan).
- A Starter 401(k) Plan (or safe harbor 403(b) plan) would generally require that all employees be default enrolled in the plan at a 3 to 15% of compensation deferral rate.
- The limit on annual deferrals would be the same as the IRA contribution limit, which for 2023 is $6,500 with an additional $1,000 in catch-up contributions beginning at age 50.

Effective Date: January 1, 2024

Modified Age Requirements for ABLEs

- The age at which blindness or disability must occur in order for an individual to qualify for an ABLE account will be increased from 26 to 46.
- Individuals will not have to be under 46 in 2026 to be eligible to have such an account, but rather, must only have been under 46 at the time they became disabled.
  - This is significant because many disabilities develop after age 25, which means that individuals who suffered from such conditions were locked out of saving to an ABLE account under previous law.

Effective Date: January 1, 2026

Long-Term Part-Time Employees

- The SECURE Act of 2019 required employers to allow long-term, part-time workers to participate in the employers' 401(k) plans. That provision provides that – except in the case of collectively bargained plans – employers maintaining a 401(k) plan must have a dual eligibility requirement under which an employee must complete:
  - 1 year of service (with the 1,000-hour rule) or
  - 3 consecutive years of service (where the employee completes at least 500 hours of service).

Long-Term Part-Time Employees (cont.)

- This new Act makes the following changes:
  - Reduces the 3-year rule to 2 years.
  - Pre-2021 service is disregarded for vesting purposes
  - Extends the long-term part-time coverage rules to 403(b) plans that are subject to ERISA.

Effective Date: January 1, 2025

IRC §529 Plan to Roth Rollovers

- This new Act eliminates the issue of “Trapped 529 Accounts” by providing families and students with the option to avoid the penalty, potentially resulting in families putting more into their 529 account.
- Families who sacrifice and save in 529 accounts should not be punished with tax and penalty years later if the beneficiary has found an alternative way to pay for their education.
- They should be able to retain their savings and begin their retirement account on a positive note.

IRC §529 Plan to Roth Rollovers (cont.)

- The new Act amends the IRC to allow for tax and penalty free rollovers from 529 accounts to Roth IRAs, under certain conditions.
  - Beneficiaries of 529 college savings accounts would be permitted to rollover up to $35,000 over the course of their lifetime from any 529 account in their name to their Roth IRA;
  - These rollovers ARE subject to Roth IRA annual contribution limits; and
  - The 529 account must have been open for more than 15 years.

Effective Date: January 1, 2023

IRC §529 Plan to Roth Rollovers (cont.)
PLANNING OPPOUTNITY

- It is likely that most individuals will use the new ability to transfer up to $35,000 from a 529 plan to a Roth IRA for its congressionally intended purpose: allowing money that was earmarked for educational purposes to be repurposed as retirement savings in the event those funds are not needed for education after all.
  - However, for a small cross-section of higher-net-worth families, this new technique could be used to 'prime the retirement pump' for children, grandchildren, and other loved ones.

IRC §529 Plan to Roth Rollovers (cont.)
PLANNING OPPOUTNITY (cont.)

- **Example:** At the time a child is born, a contribution could be made to a 529 plan for their benefit. 15 years later, the account's funds could begin to be moved to a Roth IRA for the child's benefit in the amount of the maximum IRA contribution amount for each year
  - Note: The transfer rules require that the child have compensation - such as from a summer or part-time job - in order to make the transfer, such as would be required for them to make a 'regular' Roth IRA contribution).
- With proper planning and continued annual transfers until the $35,000 lifetime transfer limit is reached, the child's Roth IRA balance at age 65 could easily approach, or even exceed, $1,000,000.

Emergency Savings Accounts

- The new Act provides employers the option to offer to their non-highly compensated employees pension-linked emergency savings accounts.
- Such accounts will *not* be available as standalone individual accounts, but rather, they will be linked to existing employer retirement plans with individual balances, such as 401(k) and 403(b) plan accounts.
- Employers may automatically opt employees into these accounts at no more than 3% of their salary, and the portion of an account attributable to the employee's contribution is capped at $2,500 (or lower as set by the employer).
- Once the cap is reached, the additional contributions can be directed to the employee's Roth defined contribution plan (if they have one) or stopped until the balance attributable to contributions falls below the cap.

Emergency Savings Accounts (cont.)

- Contributions are made on a Roth-like basis and are treated as elective deferrals for purposes of retirement matching contributions with an annual matching cap set at the maximum account balance – i.e., $2,500, or lower as set by the plan sponsor.
- The first four withdrawals from the account each plan year may not be subject to any fees or charges. At separation from service, employees may take their emergency savings accounts as cash or roll it into their Roth defined contribution plan (if they have one) or IRA.

Effective Date: January 1, 2023

Enhancement of 403(b) Plans

- Under prior law, 403(b) plan investments are generally limited to annuity contracts and publicly traded mutual funds.
  - This limitation cuts off 403(b) plan participants – generally, employees of charities and public schools, colleges, and universities– from access to collective investment trusts, which are often used by 401(a) plans to expand investment options for plan participants at a lower overall cost.
- The new Act permits 403(b) custodial accounts to participate in group trusts with other tax-preferred savings plans and IRAs.

Effective Date: January 1, 2023

Qualifying Longevity Annuity Contracts

- A “Qualified Longevity Annuity Contract” (QLAC) is a type of annuity specifically designed to keep a retiree from outliving his or her retirement savings.
- As a deferred annuity, a QLACs provides a retiree with a guaranteed stream of income later in life.
- A QLAC is a deferred fixed annuity contract sold by insurance and financial services companies that is purchased with money from a retirement account, such as a 401(k) or an individual retirement account (IRA).
- The term “qualified” means that the annuity has met the requirements set by the government for special treatment when purchased with retirement account funds.

Qualifying Longevity Annuity Contracts (cont.)

- The term “longevity” alludes to the chief purpose of a QLAC: making sure that a retiree does not outlive his or her money.
- The term “*annuity contract”* means that a retiree gets a guaranteed stream of income.
  - A QLAC provider sends the retireee regular income payments based on the amount the retiree transferred/deposited in the annuity, the percentage growth they guarantee and the date the retiree wants to start receiving payments.
  - The longer that the retiree waits to start receiving income, the larger the retiree’s payments will be.

Qualifying Longevity Annuity Contracts (cont.)

- In 2014, the Treasury published final regulations on qualifying longevity annuity contracts (“QLACs”).
- QLACs are generally deferred annuities that begin payment at the end of an individual’s life expectancy.
- Because payments start so late, QLACs are an inexpensive way for retirees to hedge the risk of outliving their savings in defined contribution plans and IRAs.
- The minimum distribution rules were an impediment to the growth of QLACs in defined contribution plans and IRAs because those rules generally require payments to commence at age 72, before QLACs begin payments.

Qualifying Longevity Annuity Contracts (cont.)

- The 2014 regs generally exempted QLACs from the minimum distribution rules until payments commence. Due to a lack of statutory authority to provide a full exemption, the regs imposed certain limits on the exemption that have prevented QLACs from achieving longevity protection.
- The new Act addresses these limitations by:
  - Repealing the 25% limit;
  - Allowing up to $200,000 (indexed; up from $135,000) to purchase a QLAC; and
  - Facilitating the sales of QLACs with spousal survival rights.

Effective Date: Contracts purchased or received in an exchange beginning January 1, 2023

IRA Qualified Charitable Distribution (QCD) to a "Split-Interest Entity"

- The new Act expands the IRA charitable distribution provision to allow for a one-time, $50,000 distribution to a "Split-Interest Entity".
- The term "Split-Interest Entity" means:
  - A Charitable Remainder Annuity Trust (Sec 664(d)(1));
  - A Charitable Remainder Unitrust (Sec 664(d)(2)); or
  - A Charitable Gift Annuity (Sec 501(m)(5)).
- Both the $100K and $50K amounts will be inflation adjusted after 2023 to the nearest $1,000.

Effective Date: January 1, 2023

IRA QCD to a “Split-Interest Entity” (cont.)
PLANNING OPPOUTNITY

- Because of the contribution limit and the costs of establishing a CRAT or a CRUT, clients who are interested in utilizing the one-time ability to make a QCD of up to $50,000 to fund a split-interest entity, the entity of choice will likely be a Charitable Gift Annuity (CGA).
  - Such entities are created and operated by charities, limiting the associated out-of-pocket costs for taxpayers.

Excess Accumulation Penalty

- Section 302 of the Act reduces the penalty for failure to take required minimum distributions from 50% to 25%.
- Further, if a failure to take a required minimum distribution from an IRA is corrected in a timely manner, as defined under this Act, the excise tax on the failure is further reduced from 25% to 10%.
- **QUESTION: Will administrative relief still be available?**

Effective Date: January 1, 2023

Excess Contribution Penalty Limitation

- Under prior law, the statute of limitations for excise taxes imposed on excess contributions or required minimum distribution failures start running as of the date that a specific excise tax return (Form 5329) is filed for the violation.
- Individuals often are not aware of the requirement to file Form 5329, and this can lead to an indefinite period of limitations that can cause hardship for taxpayers due to the accumulation of interest and penalties.

Excess Contribution Penalty Limitation (cont.)

- To provide finality for taxpayers in the administration of these excise taxes, Section 313 of the Act provides that a 3-year period of limitations begins when the taxpayer files an individual tax return (Form 1040) for the year of the violation, except in the case of excess contributions, in which case the period of limitations runs 6 years from the date Form 1040 is filed.
- There is a further exception from this 6-year rule for taxes that arise out of a bargain sale to the IRA.
  - In general, these changes are intended to ensure that there is a reasonable period of limitations for violations of which taxpayers were not aware and thus did not file an excise tax return, while retaining existing law in fact scenarios that involve a bargain sale.

Effective Date: January 1, 2023

Retroactive 1st Year Elective Deferrals

- Under the 2019 SECURE Act, an employer may establish a new 401(k) plan after the end of the taxable year, but before the employer's tax filing date and treat the plan as having been established on the last day of the taxable year.
  - Such plans may be funded by employer contributions up to the employer's tax filing date.
- The new law allows these plans, when they are sponsored by sole proprietors or single-member LLCs, to receive employee contributions up to the date of the employee's tax return filing date for the initial year.

Effective Date: January 1, 2023

IRA Involved in Prohibited Transactions

- When an individual engages in a prohibited transaction with respect to their IRA, the IRA is disqualified and treated as distributed to the individual, irrespective of the size of the prohibited transaction.
- The new law clarifies that if an individual has multiple IRAs, only the IRA with respect to which the prohibited transaction occurred will be disqualified.

Effective Date: January 1, 2023

Roth Distribution Rules

- Under prior law, required minimum distributions are not required to begin prior to the death of the owner of a Roth IRA.
- However, pre-death distributions are required in the case of the owner of a Roth designated account in an employer retirement plan (e.g., 401(k) plan).
- The law change eliminates the pre-death distribution requirement for Roth accounts in employer plans, effective for taxable years beginning after December 31, 2023.
- This change does not apply to distributions which are required with respect to years beginning before January 1, 2024, but are permitted to be paid on or after such date.

Effective Date: January 1, 2024

Surviving Spouse Treated as an Employee

- The new Act allows a surviving spouse to elect to be treated as the deceased employee for purposes of the required minimum distribution rules.

Effective Date: January 1, 2024

Replace SIMPLE with Safe Harbor 401(k)

- The new Act allows an employer to replace a SIMPLE IRA plan with a SIMPLE 401(k) plan or other 401(k) plan that requires mandatory employer contributions during a plan year.

Effective Date: January 1, 2024

Required Minimum Distribution (RMD) Rules For Special Needs Trust

- The 2019 SECURE Act placed limits on the ability of beneficiaries of defined contribution retirement plans and IRAs to receive lifetime distributions after the account owner's death.
- Special rules apply in the case of certain beneficiaries, such as those with a disability.
- This tax law change clarifies that, in the case of a special needs trust established for a beneficiary with a disability, the trust may provide for a charitable organization as the remainder beneficiary.

Effective Date: January 1, 2023

SIMPLE and SEP Roth IRAs

- Generally, all plans that allow pre-tax employee contributions are permitted to accept Roth contributions with one exception – SIMPLE IRAs.
  - 401(k), 403(b), and governmental 457(b) plans are allowed to accept Roth employee contributions.
- The law change allows SIMPLE IRAs to accept Roth contributions.
- In addition, the provision would also allow employers to offer employees the ability to treat employee and employer SEP contributions as Roth (in whole or in part).
- Employee election is required.

Effective Date: January 1, 2023

Hardship Withdrawals for 403(b) Plans

- The following amounts may be distributed upon hardship of the employee:
  - Contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)).
  - Qualified nonelective contributions (as defined in section 401(m)(4)(C)).
  - Qualified matching contributions described in section 401(k)(3)(D)(ii)(I).
  - Earnings on any contributions

Effective Date: January 1, 2024

Catch-Up Contributions Required to be Roth

- Under prior law, catch-up contributions to a qualified retirement plan can be made on a pre-tax or Roth basis (if permitted by the plan sponsor).
- The new Act, (amending IRC §414) provides that effective January 1, 2023, all catch-up contributions to qualified retirement plans would be subject to Roth tax treatment.
- An exception is provided for employees with compensation of $145,000 or less (indexed).

Effective Date: January 1, 2024

Employer Matching as Roth Contributions

- Under prior 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.
  - Matching contributions must be on a pre-tax basis only.
- The new Act allows defined contribution plans to provide participants with the option of receiving matching contributions on a Roth basis.

Effective Date: January 1, 2023

Withdrawals for Certain Emergencies

- Generally, an additional 10% tax applies to early distributions from tax-preferred retirement accounts, such as 401(k) plans and IRAs, unless an exception applies.
- The new law provides an exception for certain distributions used for emergency expenses, which are unforeseeable or immediate financial needs relating to personal or family emergency expenses.
- Only one distribution is permissible per year of up to $1,000, and a taxpayer has the option to repay the distribution within 3 years.
- No further emergency distributions are permissible during the 3-year repayment period unless repayment occurs.

Effective Date: January 1, 2024

First Responder Disability Payments

- This new Act (which amends IRC §139) permits qualified first responders to exclude service-connected disability pension payments from gross income after reaching retirement age.
- The term “Qualified First Responder Retirement Payments” means, with respect to any taxable year, any pension or annuity which but for this section would be includible in gross income for such taxable year which is received
  - From a plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B), and
  - In connection with such individual’s qualified first responder service.

Effective: January 1, 2027

Distributions to Firefighters

- Under prior law, if an employee terminated employment after age 55 and takes a distribution from a retirement plan, the 10% early distribution tax does not apply.
- However, there is a special rule for “qualified public safety employees” in governmental plans, under which age 50 is substituted for age 55 for purposes of this exception from the 10% tax.
- This exemption applies to public sector firefighters, but not private sector firefighters.
- The new tax law extends the age 50 rule to private sector firefighters, who merit the same treatment for distributions.

Effective Date: January 1, 2023

Repayment of Birth or Adoption Distributions

- The 2019 SECURE Act included a provision that allows individuals to receive distributions from their retirement plan in the case of birth or adoption without paying the 10% additional tax.
- The prior law allowed distributions to be recontributed at any time.
- IRC §6511 prevents a refund from being provided to a taxpayer after the period of limitations for the return has closed, which is generally a 3-year period.
- Recontribution after 3 years = no refund
- The new Act restricts the recontribution period to 3 years.

Effective for distributions made after the date of the enactment of this Act and retroactively to the 3-year period beginning on the day after the date on which such distribution was received.

Withdrawals – Domestic Abuse

- A domestic abuse survivor may need to access his or her money in their retirement account for various reasons, such as escaping an unsafe situation.
- Act Section 314 allows retirement plans to permit participants that self-certify that they experienced domestic abuse to withdraw a small amount of money not subject to the 10% early withdrawal penalty and not to exceed the lesser of:
    - $10,000; or
    - 50% of the present value of the nonforfeitable accrued benefit of the employee under the plan.
- Made during the 1-year period beginning on any date on which the individual is a victim of domestic abuse by a spouse or domestic partner.

Withdrawals – Domestic Abuse (cont.)

- The term “domestic abuse” means physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim’s ability to reason independently including by means of abuse of the victim’s child or another family member living in the household.
- Distribution may be repaid at any time during the 3-year period beginning on the day after the date on which such distribution was received.
- Applies to qualified plans and IRAs

Effective Date: January 1, 2023

Substantially Equal Periodic Payment Rule

- The prior law imposed a 10% additional tax on early distributions from tax-preferred retirement accounts, but an exception applies to substantially equal periodic payments that are made over the account owner’s life expectancy.
- This new law provides that the exception continues to apply in the case of a rollover of the account, an exchange of an annuity providing the payments, or an annuity that satisfies the required minimum distribution rules.

Effective Date: Starting January 1, 2024, for transfers, rollovers, and exchanges; Starting January 1, 2023, for annuity distributions.

Penalty Exception – Terminal Illness

- Under prior law, an additional 10% penalty applied to early distributions from tax-preferred retirement accounts.
- The new law provides an exception to the tax in the case of a distribution to a terminally ill individual.

Effective Date: January 1, 2023

Public Safety Officer Health Insurance

- The prior law provided an exclusion from gross income (up to $3,000) for a distribution from a governmental retirement plan to a public safety officer to pay for their health insurance premiums.

- The exclusion required that the plan directly pay the insurance premiums.

- The new law repeals the direct payment requirement and requires the retiree to include an attestation in their return that the distribution does not exceed the amount the retiree paid for qualified health insurance premiums for the year of the payment.

Effective Date: January 1, 2023

Public Safety Officer Withdrawal Penalty

- The 10% additional tax on early distributions from tax preferred retirement savings plans did not apply to a distribution from a governmental plan to a public safety officer who is at least age 50.
- The Act extends the exception to public safety officers at least age 50 or with at least 25 years of service with the employer sponsoring the plan, whichever comes first.

Effective Date: January 1, 2023

Government Corrections Employees

- This new law extends the public safety officer exception to the 10% early distribution tax to corrections officers who are employees of state and local governments.

Effective Date: January 1, 2022

Federally Declared Disasters

- This tax change provides permanent rules relating to the use of retirement funds in the case of a federally declared disaster.
  - The permanent rules allow up to $22,000 to be distributed from employer retirement plans or IRAs for affected individuals.
  - Such distributions are not subject to the 10% additional tax and are considered as gross income over 3 years.
  - Distributions can be repaid to a tax preferred retirement account.
  - Additionally, amounts distributed prior to the disaster to purchase a home can be recontributed.

Federally Declared Disasters (cont.)

- An employer is permitted to provide for a larger amount to be borrowed from a plan by affected individuals and for additional time for repayment of plan loans owed by affected individuals.

Effective Date: Effective for disasters occurring on or after January 26, 2021.

Elimination of 10% Penalty on Corrective Distributions

- The prior law required a distribution if too much is contributed to an IRA.
  - The “corrective distribution” included the excessive contribution and any earnings allocable to that contribution.
- The new law exempts the excess contribution and earnings allocable to the excess contribution from the 10% additional tax on early distributions.

Effective Date: Is effective for any determination of, or affecting, liability for taxes, interest, or penalties which is made on or after the date of enactment of this Act, without regard to whether the act (or failure to act) upon which the determination is based occurred before such date of enactment.

Long-Term Care Insurance Purchased With Retirement Plan Funds

- The new law permits retirement plans to distribute up to $2,500 per year for the payment of premiums for certain specified long-term care insurance contracts.
- The $2,500 will be inflation adjusted for years after 2024.
- Distributions from plans to pay such premiums are exempt from the additional 10% tax on early distributions.
- Only a policy that provides for high quality coverage is eligible for early distribution and waiver of the 10% tax.

Effective Date: January 1, 2026

Self-Certifying Hardship Distribution

- The new Act provides that, under certain circumstances, employees are permitted to self-certify that they have had an event that constitutes a hardship for purposes of taking a hardship withdrawal.
- This is a logical step considering the success of the coronavirus-related distribution self-certification rules and the current hardship regulations that already permit employees to self-certify that they do not have other funds available to address a hardship.

Effective Date: January 1, 2023

Sale of an Employee Stock to an ESOP

- Under IRC §1042, an individual owner of stock in a non-publicly traded C corporation that sponsors an Employee Stock Ownership Plan ("ESOP") may elect to defer the recognition of gain from the sale of such stock to the ESOP if the seller reinvests the sales proceeds into qualified replacement property, such as stock or other securities issued by a U.S. operating corporation.
- After the sale, the ESOP must own at least 30% of the employer corporation's stock.
- This new law expands the gain deferral provisions of IRC §1042 with a 10% limit on the deferral to sales of employer stock to S corporation ESOPs.

Effective Date: For sales made on or after January 1, 2028

Rural Electric Cooperative Retirement Plan

- Under prior law, IRC §415 generally limited the amount that may be paid by a pension plan in annual benefits to a participant to the lesser of $265,000 (for 2023) or 100% of the participant's average compensation.
- This new law eliminates the compensation-based limit for participants who are non-highly compensated employees and participate in a rural electric cooperative retirement plan.

Effective Date: January 1, 2023

Inherited IRA Options

- Proposed regulations of changes made by the original SECURE Act would require certain beneficiaries of IRAs and other retirement plans inherited from decedents dying after 2019 to make annual withdrawals from the plans during the 10 years after the decedent's death rather than being able to wait until the tenth year to fully distribute the account.
- Under the proposed regs the required withdrawals would apply to heirs other than a surviving spouse, those chronically ill or disabled, and a minor child of the decedent.

Inherited IRA Options (cont.)

- This interpretation meant that distributions should have occurred in 2021 and 2022, even though the proposed regs weren't issued until February 2022.
- Many tax professionals and commentators expected that no distributions would be required until the tenth year.
- This raised the possibility that the 50% penalty for failing to take required minimum distributions might apply for 2021 and 2022.

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