



# The SECURE Act 2.0

Signed into law on December 29, 2022 by President Biden as part of the Consolidated Appropriations Act, 2023, the SECURE Act 2.0 (the act) takes off where the original SECURE Act (1.0) left off.

The act includes provisions to make larger contributions to accumulate more money on a tax-deferred basis for retirement. It will also lead to other accumulation and distribution income tax strategies to minimize current and future income tax before and after retirement. The act contains measures that will have a direct financial impact to a broad range of individuals, beneficiaries and employers of all sizes sponsoring retirement plans to attract and retain employees.

While many provisions of the act are in effect for 2023, there are others that will gradually take effect over the next decade. This document will review key provisions of the act, but is not intended to be comprehensive. The changes are grouped by effective date.

## 2023

- The lifetime required minimum distribution (RMD) beginning age increases to 73 for an individual who attains age 72 after December 31, 2022 and age 73 before January 1, 2033.
- The excise tax for missed RMDs is reduced from 50% of the shortfall to 25% of the shortfall, and potentially further reduced to 10% if a timely correction is made.
- An individual subject to annual RMDs is permitted to use certain annuity payments to offset RMDs due under the account balance method.
- The amount that can be placed in a qualified longevity annuity contract (QLAC), previously the lesser of \$135,000 or 25% of retirement plan values, increases to \$200,000 (indexed for inflation) with no percentage limit.
- A new exception to the 10% early withdrawal penalty would be available to public safety officer governmental plan participants who separate from service after reaching age 50 or with 25 years of plan participation, if earlier.
- A new exception to the 10% early distribution penalty tax is for individuals with a terminal illness.
- There is now a permanent exception to the 10% early distribution penalty tax for qualified federally declared disasters, allowing up to \$22,000 to be distributed free of the 10% penalty and which can be included in income over 3 years.
- Participants in Simplified Employee Pensions with a salary deferral feature (SARSEP) and SIMPLE IRA plans are permitted to have a designated Roth account.
- The act clarified that special needs trusts may have a charity as the remainder beneficiary and still allow for **stretch** distributions over the disabled beneficiary's life expectancy.
- The act changes the small business pension plan startup credit, increasing it to 100% of administrative costs for employers with up to 50 employees. Also, except in the case of defined benefit plans, an additional credit is provided equal to a percentage of the amount contributed by the employer on behalf of employees, up to a per-employee cap of \$1,000. This additional credit is limited to employers with 50 or fewer employees and phased out for employers with between 51 and 100 employees.
- The amount that can be placed in a qualified longevity annuity contract (QLAC), currently at \$155,000 or 25% of retirement plan values, increases to \$200,000 with no percentage limit, and the \$200,000 cap will be indexed for inflation.

Americans who are looking to save for retirement but do not have access to an employer-sponsored retirement plan or are limited in how much they can contribute to retirement plans and IRAs may consider using nonqualified annuities and life insurance to supplement their retirement income needs.

## 2024

- Subject to certain limitations, there is an additional new exception to the pre-age 59½, 10% penalty tax for early distributions up to \$1,000 used for emergency expenses.
- There is a new exception to the 10% early distribution penalty tax for distributions up to \$10,000 in the case of domestic abuse.
- Employers are allowed to make matching contributions to a 401(k), 403(b), governmental 457(b) and SIMPLE IRA plan based on a participant's student loan payments without an adverse impact on testing.
- Beneficiaries of college savings 529 plans that have been open for over 15 years are allowed to roll over up to \$35,000 in their life from a 529 plan to a Roth IRA, subject to Roth IRA annual contribution limits and other conditions.
- The \$1,000 IRA catch-up contribution for individuals age 50 or older will be indexed for inflation.
- The maximum \$100,000 qualified charitable distribution amount from IRAs given directly to charities for those who are 70½ or older is indexed by inflation.

## 2025

- There are higher catch-up limits under retirement plans starting at age 60, 61, 62 and 63.
- Catch-up contributions must be made into designated Roth accounts of 401(k), 403(b) or governmental 457(b) unless the participant's wages from the employer were \$145,000 or less in the prior year.
- The act permits retirement plans to distribute up to the lesser of \$2,500 per year, the participant's annual premium amount or 10% of the participant's account balance for the payment of qualified long-term care insurance premiums without being subject to the 10% early distribution penalty tax. The \$2,500 will be indexed for inflation.
- The act requires 401(k) and 403(b) plans to automatically enroll participants upon becoming eligible (employees may opt out of participation). There is an exception for small businesses with 10 or fewer employees, businesses that have been in business for less than 3 years, church plans and governmental plans.

## 2026

- ABLÉ accounts are tax-advantaged savings programs for certain people with disabilities and distributions are tax-free if used for qualified disability expenses. The act increases the age by which disability must occur for an individual to be eligible for an ABLÉ account from age 26 to 46.

## 2027

- The act repeals and replaces the existing nonrefundable saver's credit with respect to IRA and retirement plan contributions for taxpayers at certain income levels, changing it from a credit paid in cash as part of a tax refund (against taxes owed) to a federal matching contribution that must be deposited into a taxpayer's IRA or retirement plan.

## 2033

- The lifetime required minimum distribution (RMD) beginning age increases to age 75 for individuals who attain age 74 after December 31, 2032.

These new opportunities will give Americans new and improved retirement planning strategies and income tax planning opportunities in the future. There are many more components of SECURE 2.0 not discussed above that will impact your clients. The new provisions mentioned above may be subject to further interpretation and clarification by future regulations yet to be released.

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