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# 401(k)ology:
# What you need to know about SECURE 2.0

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Presented by:

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# Agenda



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# Overview – How did we get here?

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# History of SECURE 2.0

Original SECURE Act passed in 2019

## Post-SECURE bills introduced

- Retirement Security Savings Act
- Enhancing American Retirement Now Act (EARN Act)
- Retirement Improvement & Savings Enhancement to Supplemental Health Improvements for the Nest Egg Act (RISE & SHINE Act)
- Securing a Strong Retirement Act (SECURE 2.0)

# History of SECURE 2.0

## How it happened

In 2022, congressional staff worked diligently to negotiate a final bill from the provisions included in four bills that had been introduced by both the House & Senate.

The final version of SECURE 2.0 was included in a must pass omnibus spending bill at the very end of December 2022.

Upon passing with bipartisan support, President Biden signed the spending bill into law on December 29, 2022, which included the widely anticipated SECURE 2.0 Act.

## Why it happened

Predominantly to expand coverage to millions of American workers who do not have access to workplace retirement plans.

# Immediate impact on plan operations 2022 -2023

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# Key provisions 2022 -2023

- Exceptions to 10% early withdrawal penalty for participants under age 59.5 for qualified disaster distributions, qualified birth or adoption distributions and distributions to the terminally ill
- Required minimum distribution (RMD) age increased to age 73 effective January 1, 2023. Penalty for missed RMD reduced from 50% to 25% (and in some cases 10%)
- Low dollar incentives for electing to defer to plan permitted (i.e., employer provided gift cards)
- Hardship withdrawal self-certification by participants, as to the event and the financial need
- Participants may designate employer contributions (i.e., match) as Roth
- Elimination of notice requirement for unenrolled participants

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# Key provisions 2022 -2023

Callouts

## Designating employer contributions as Roth

- Applies to vested contributions
- Applies to match and non-elective contributions
- Participant must elect Roth treatment
- Current taxation flows to employee form W2
- Expecting more guidance
- Same tax deduction by the employer as before

## Hardship self-certification

- Distribution cannot exceed amount to satisfy need
- Is on account of event permitted under safe harbor hardship regulations
- Has no other resources
- Regulations needed for contrary knowledge and employee misrepresentation

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# Changes coming 2024 -2025

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# SECURE 2.0 provisions coming soon…

Effective 2024

- Pre-death RMDs (age 73) eliminated for Roth 401(k) accounts

- Match on qualified student loan repayments, no impact on annual nondiscrimination testing

- Penalty free emergency withdrawals (no 10% early withdrawal penalty, limited to 1 per year up to $1,000 and may be repaid over 3 years)

- Penalty free withdrawals up to $10,000 (or 50% of account if less) for domestic abuse survivors

- Amendments that increase benefits may be adopted after the end of the plan year (by due date of employer's tax return)

- Mandatory cash out limit increased from $5,000 to $7,000 (forced IRAs for terminated participants)

- Long-term part time employees must be included under SECURE 1.0 rules (3 consecutive years with 500-999 hours of service and age 21). SECURE 2.0 LTPT rules take effect in 2025!

- Roth tax treatment required for age 50+ catch up contributions for those earning more than $145,000 (indexed) in the prior year.
    - Oops! Technical correction needed from IRS!

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# SECURE 2.0 provisions coming soon…

Compliance Testing Wins (2024)

Top-heavy testing may be performed separately for non-excludable employees (allows employees to begin making deferrals earlier without impacting required contributions).

Family attribution rules reformed for stock ownership in determining related employers (addresses community property state issues, and parents of minors who own separate businesses).

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# SECURE 2.0 provisions coming soon…

## Effective 2025

Higher deferral catch-up limit for participants ages 60-63, up to $10,000 or 150% of annual dollar limit (indexed).

Auto-enrollment (3-10%) and auto-escalation (10-15%) required for newly established plans.

Existing plans will be grandfathered (in existence prior to 12/29/2022). Must allow permissible withdrawals up to 90 days after auto-enroll.

- *Applies to MEP and PEP adopters!*

Long-term, part-time (LTPT) employees must be able to defer after 2 consecutive years with at least 500 hours.

No employer contributions required for LTPT employees and LTPT employees do not impact nondiscrimination testing.

# SECURE 2.0 provisions coming soon…

Callouts

## Long-Term Part-Time Employees (LTPT)

- LTPT have different rules for 2024 versus 2025. LTPT employees who have 3 consecutive years with 500+ hours must enter in 2024 (SECURE 1.0).
- Effective 2025, LTPT employees are subject to the 2 consecutive years requirement under SECURE 2.0.

## Mandatory Auto Enroll/Escalation Exceptions

- Established before 12/29/2022
- Employer with less than 11 employees
- New business entity (<3 years)
- Governmental plans, church and SIMPLE 401(k)s

# Mandatory vs. optional provisions

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# SECURE 2.0 mandatory vs. optional provisions

## Mandatory Provisions

- Auto-Enrollment/Auto-Escalation – Required in new plans, plans in effect before 12/29/2022 are grandfathered (not required to add)
- QBAD repayment period is 3 years (immediately)
- RMD age increased to 73 (2023)
- Roth tax treatment for age 50+ catch ups (2024)
- Force out limit increase from $5,000 to $7,000 (2024)
- Age 73 RMD not required from Roth 401(k) accounts (2024)
- Long-term, part-time employees in after 2 years with 500+ hours (2025)
- Annual Paper Statement Required (2026)

## Optional Provisions

- Hardship withdrawal self-certification (2023)
- Roth tax treatment of employer contributions (2023)
- Small incentives for contributing (2023)
- Matching on student loan repayments (2024)
- Sidecar emergency savings accounts (2024)
- Force out IRA auto-portability to new employer's plan (2024)
- Penalty free emergency withdrawals up to $1k per year (2024)
- Distributions for disaster relief, qualified birth or adoption (QBAD), terminally ill, and survivors of domestic abuse (all exempt from 10% early withdrawal penalty)

# Optional employer match on student loan repayments

Available starting in 2024!

Qualified student loan repayments are treated like deferrals for the employer matching contribution.

**“Qualified Student Loan Repayment”**

- On behalf of the employee
- Qualified higher education expenses
- At least half-time of a full student load
- Employee must certify payments made annually
- Employer may rely on employee certification

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# Optional employer match on student loan repayments

Available starting in 2024!

### Matching contributions

- Must be same rate of match as provided on deferrals
- Vesting schedule is the same as match made on deferrals
- Employee must meet all other eligibility requirements for the regular match on employee deferrals
- Special ADP/ACP testing (may separate those who get the match on student loans versus on deferrals)

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# Synergy – the bonus that is achieved when things work together harmoniously.

Mark Twain

# Bonus! What was not eliminated?

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# The “bonus” in SECURE 2.0…MEGA backdoor Roth provisions were not eliminated!

After-tax contributions with in-plan Roth conversion (aka “MEGA-backdoor Roth”) allow participants to save even more into their 401(k) plan up to the annual individual contribution limit, which in 2023 is $66,000 (or $73,500 if age 50+).

For the purposes of non-discrimination testing, employee after-tax contributions are tested in the Actual Contribution Percentage (ACP) Test and are categorized the same as employer matching contributions.

Failed ACP Tests may be corrected by Actual Deferral Percentage (ADP) Test “borrowing”, distributing any excess contributions to HCEs, or making additional contributions to NHCEs

In a safe harbor 401(k) plan that utilizes a required match to satisfy the ADP Test, after-tax contributions may be added to the safe harbor match (or a portion of the safe harbor match) to demonstrate that the plan satisfies the ACP Test.

# What happens next?

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# What happens next?

1. Congress expected to provide technical corrections, IRS to issue guidance and model good faith language for required interim plan amendments.

2. ERISA attorneys and plan document drafters will review the provisions and the model language and will begin drafting plan amendments for plan sponsors to adopt by the end of 2025 (may be later).

3. Recordkeepers and plan service providers will make updates to daily recordkeeping platforms and compliance testing software to handle the changes in plan operation and non-discrimination tests.

4. Service providers will provide education and will discuss plan design changes regarding optional provisions that may work for the specific client.

# IRS and DOL "honey do" lists

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# IRS list

- Issue regulatory guidance regarding plan operation
- Revisions to applicable tax forms
- EPCRS expansion to allow for more types of errors to be self-corrected. IRS guidance within 2 years.
- Penalty free safe harbor for deferral errors in automatic enrollment plans if corrected within 9.5 months after plan year end (2024).
- Statute of limitations extended for certain excise taxes, where taxpayers were not aware, nor filed Form 5330.

# DOL list

- Retirement Savings Lost & Found - online database through DOL to connect retirement funds with missing participants. Likely 2025.
- Paper statements will make a comeback with one required to be provided annually (2026). Opting out will still be available.
- Participant Notice Simplification:
    - Simplified direct rollover forms and tax notices (2025)
    - DOL to improve fee disclosure notices and fiduciary disclosures required for participant directed plans (within 3 years)
    - Notice consolidation – regulations will be amended within 2 years to combine certain notices
    - New risk mitigation notice – benefits of leaving money in the plan vs. taking a lump sum (est. 2025)

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# Plan amendments

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# Plan amendment deadline for SECURE 2.0

## Applies to 401(k), 403(b) and 457(b) plans

Plan amendments must be adopted by the end of the 2025 Plan Year for:

- SECURE 1.0
- CARES
- Taxpayer Certainty and Disaster Tax Relief Act of 2020
- SECURE 2.0

IRS may extend the deadline (again)

- Generally, deadline is 12/31/2025 for most plans

- Amendments will be retroactively effective.
- Must operate plans in accordance with the existing laws in place for mandatory provisions.
- The amendment, when adopted, will reflect the plan's operation with respect to any optional provisions.
- Terminating plans must be amended to include provisions through termination date.

**Best practices:**

- Document any optional provisions elected, the effective date for the optional provision and any operational elections included.
- Service providers may have operational checklists to assist plan sponsors in documenting elections during the 2023-2025 period.

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# Newly established plans and tax credits

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# Mandatory automatic enrollment and auto escalation for new plans

- Newly established 401(k) and 403(b) plans will be required to include provisions starting 2025.
- Newly established plans includes new plans effective after 12/29/2022.
- However, the auto enroll/auto escalation provisions are not required until 2025.
- Initial automatic enrollment – 3% to 10%.
- Auto increases at 1% each subsequent year, capped at 10-15%.
- Permissible withdrawals must be permitted up to 90 days after first auto enrollment.
- Applies to adoption of a MEP/PEP where employer had no prior plan.

# Enhanced and New Tax Credits

## Enhanced start up tax credits (eff. NOW!)

- Start up credit increased to 100% for employers with <50 employees
  - Max $5,000/year up to 3 years
- Technical Correction: Clarified SECURE 1.0 tax credit (2020) applies to employer adopting first plan by joining a MEP

## New credits – 2023

- Employer with <100 employees, 100% tax credit for employer contributions (i.e., match) up to $1,000 per employee making < $100,000 for 1st year, phased out by 25% over next 4 years (phases out for employers >50 but <100 employees)
- Employers may not take a tax deduction for any amounts which are credited

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# Thank you

## About the author:

Joni Jennings, CPC, CPFA™ is Newfront Retirement Services, Inc. Compliance Manager. Her 30 years of ERISA compliance experience expands value to sponsors of qualified retirement plans by offering compliance support to our team of advisors and valued clients. She specializes in IRS/DOL plan corrections for 401(k) and 403(b) plans, plan documents and plan design.

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