Secure Act 2.0 Provisions | September 2023

Catch-up Contributions as Roth Deferrals – DELAYED until 2026:

Under current law, a participant eligible for the Age 50+ Catch-Up ("Catch-Up") contribution provision under a 401(k) plan, 403(b) plan, or governmental 457(b) plan may contribute the Catch-Up amount on a pre-tax and/or Roth basis (if permitted by the plan document). Under Secure Act 2.0, beginning in 2024, however, if a participant's prior year 3121(a) FICA wages from the employer sponsoring the plan exceeded $145,000, then that participant may only make a Catch-Up contribution as a Roth contribution. The $145,000 wage threshold is subject to IRS annual cost of living adjustments in $5,000 increments. The IRS granted a 2-year delay in this provision on August 25th.

Tax Credits for Small Plan Start Up Costs:

Effective for tax years beginning after December 31, 2022, the SECURE 2.0 Act provides for extraordinary tax credits for both the administrative and contribution costs of setting up a new plan.

The current three-year start up credit is 50% of the **administrative costs**, up to $5,000. That percent is increased to: 100% for employers with up to 50 employees, with a pro-ratable phase out for between 51 and 100 employees.

The Act adds a new credit **for the costs of contributions** made by employers (except for contributions to defined benefit plans). The credit is a percent of the contributions made by the employer for the participants up to $1,000 per participant. The credit is 100% for the first 2 years, 75% in the 3rd, 50% in the 4th, 25% in the 5th, and nothing after that. An employer gets 100% of the available credit if it has up to 50 employees and the credit phases out pro-ratably up to 100 employees. The credit doesn't apply to contributions for employees who make over $100,000 in a year (adjusted for cost of living).

The start-up credits are available to employers who set up (i) qualified retirement plans, (ii) SIMPLE IRA arrangements and (iii) SEP IRA arrangements. The credits are also available for qualifying employers who set up single-employer arrangements or who join PEPs or MEPs.

So, You will qualify for the old start up credits if your new plan began prior to 1/1/23 and for the new enhanced credits if your plan began after 12/31/22.

Long Term Part Time Employee Eligibility (Mandatory):

There are both mandatory and optional provisions regarding "long term part time employees." An employee who works at least 500 hours over 2 consecutive years is considered a long term part time employee eligible in January of 2025 if the requirements are met in 2023 and 2024. The original SECURE Act has provisions for 3 years that would make an employee meeting those criteria eligible 2024 if they had 500 hours in the fiscal years 2021, 2022 & 2023. Those employees must be given the option to make contributions to the plan.

- No employer contributions are required to be given to these participants (that is optional).
- Special rules allow plan administrators to exclude from coverage and nondiscrimination testing employees who are eligible to participate solely because of the long-term, part-time rules.
- Employees must still satisfy the plan's age requirements.

Increase in Age for Required Minimum Distributions (RMDs (Mandatory):

Under current law, the law requires minimum distributions beginning at age 72. The Act further increases the ages as follows:

- If a person attains age 72 after December 31, 2022, the new RMD beginning age is 73.
- For a person who attains age 74 after December 31, 2032, the RMD beginning age will be 75.

Small financial Incentives for Contributing to a Plan (Optional):

Under prior law, employers could not give financial incentives to employees to join and contribute to a plan—other than matching contributions. Now, however, employers can offer de minimis financial incentives, not paid for with plan assets (such as low-dollar gift cards), to boost participation in 401(k) and 403(b) plans. This will allow employers to use gamification to increase participation.

Treatment of Student Loan Payments as Elective Deferrals for Purposes of Matching Contributions (Optional):

Effective for contributions made for plan years beginning after December 31, 2023, the Act allows eligible employees to receive matching contributions by reason of making payments on their student loans. This provision permits an employer to make matching contributions to a 401(k) plan, 403(b) plan, or SIMPLE IRA for "qualified student loan payments." A qualified student loan payment is broadly defined as any indebtedness incurred by an employee solely to pay qualified higher education expenses of the employee. Governmental employers are also permitted to make matching contributions to a 457(b) plan or other plan related to student loan payments.

For purposes of the nondiscrimination test for elective contributions, the new provision permits a plan to separately test the employees who receive matching contributions on student loan repayments.

This provision is optional and will be of particular interest to employers who hire college graduates, for example, professional firms and companies that need a well-educated workforce. We will need to give consideration to how student loan payments will be verified and reported for matching contribution purposes, but you will have the ability to rely on employee certification of payment.

Withdrawals for Certain Emergency Expenses (Optional):

Generally, an additional 10% tax applies to early distributions from tax-preferred retirement accounts unless an exception applies. Effective for distributions made after December 31, 2023, the Act provides an exception for distributions for emergency expenses which are unforeseeable or create 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.

This provision is optional. It may be attractive to companies with low or moderately paid employees who may need the extra money for emergencies.

Emergency Savings Accounts Linked to Individual Account Plan (Optional):

This new provision will allow employers the option of offering their non-highly compensated employees "pension-linked emergency savings accounts" (commonly referred to as "side car savings accounts"). Employers may automatically enroll employees into these accounts at no more than 3% of their pay, or the plan can use regular enrollment. Either way, the portion of a savings account attributable to an employee's contribution is capped at $2,500 (or lower as set by the employer). Once the cap is reached, any additional contributions can be directed to the employee's Roth account in the plan (if they have one) or stopped until the balance attributable to contributions and earnings falls below the cap. Contributions are made on a Roth-like basis and are treated as elective deferrals for purposes of matching contributions. Note, though, that matching contributions must first applied against any regular deferrals to the plan. Any matching contributions based on employee contributions to the savings account must be allocated to the plan's matching account and not to the savings account. The first four withdrawals each plan year cannot be subject to any fees. Any additional withdrawals in a plan year can be assessed a reasonable fee. At separation from service, employees may take their emergency savings accounts (i) as cash, (ii) roll it into their Roth account in the plan (if they have one), or (iii) roll it to a Roth IRA.

This new optional provision will likely be most attractive to employers with significant numbers of low to mid-paid employees. As the pandemic illustrated, many employees need savings to weather financial disruptions, but haven't accumulated savings on their own. The implementation of this provision will require a significant of work by payroll providers, plan administrators and recordkeepers (for example - developing the technology and communications materials), before it can be adopted by employers.

Special Rule for Federally Declared Disasters (Optional):

The new Act provides permanent distribution rules in connection with federally declared disasters. It allows up to $22,000 to be distributed to affected individuals. These distributions are not subject to the 10% early distribution tax, are taken into account as gross income over a three year period and may be repaid within three years.

Finally, a plan that allows loans can allow a larger amount (up to $100,000 instead of $50,000) to be borrowed by affected individuals and the participant gets additional time to repay the loan.

With respect to all these provisions we are waiting for additional guidance from the IRS in order to fully implement them, but we still need to take the time to consider them, discuss them if interested and vet out issues that will need to be addressed.

We will be providing additional guidance on other provisions within SECURE Act 2.0 as we receive clarification and regulations from the IRS and in turn help you to understand and optimize your implementation of them as the impact your Plan and your Organization.

Rehmann Retirement Plan Solutions

Sources: Internal Revenue Service plus Vanguard and Voya Plan Sponsor Retirement Plan services.