Raising the bar

Impacts of SECURE 2.0 on plan sponsors

On December 29, 2022, President Biden signed into law the SECURE 2.0 Act, a follow up to 2019's Setting Every Community Up for Retirement Enhancement Act (SECURE Act). SECURE 2.0 includes over 90 provisions, with some effective dates still a few years out.

This article first focuses on some key mandatory provisions of SECURE 2.0 that are currently effective and future mandatory provisions plan sponsors may want to think about now.

We'll then review optional provisions that you may consider adopting. Look for more information on these provisions as we get closer to their effective dates.

Mandatory provisions to think about now

Plan sponsors may want to think about these provisions now and make changes that will help implementation in the future. Lincoln is currently assessing the changes and will provide a checklist of optional provisions for plan sponsors as soon as processes have been created to accommodate the changes.

Mandatory provision	Plans impacted	Effective date
Required minimum distribution (RMD) changes to ages 73 and 75	Plans subject to RMDs	Distribution years after 12/31/2022
Roth catch-up contributions for high earners	401(k) 403(b) 457(b) gov.	Taxable years beginning after 12/31/2023
Auto-enrollment and auto-escalation features	401(k) 403(b)	Plan years beginning after 12/31/2024
Long-term, part-time employees participation	401(k) and ERISA 403(b)	Plan years effective after 12/31/2024
Repayment of Qualified Birth or Adoption Distributions (QBAD)	Plans that permit QBAD	Distributions made after Date of Enactment (DOE)
Expansion of Employee Plans Compliance Resolution System (EPCRS) updates	401(a)/(k) 403(b)	Upon enactment but may require guidance
Annual paper benefit statement requirement	ERISA plans	Plan years beginning after 12/31/2025

RMD changes to ages 73 and 75

Beginning in 2023, SECURE 2.0 increases the age for required minimum distributions (RMDs). After the SECURE Act, RMDs needed to start by age 72. Participants who turned 72 in 2022 (that is, those born in 1950) won't be affected by SECURE 2.0 — even if they wait to take their RMD until April 1, 2023, they must still take an RMD for 2022. Under SECURE 2.0, individuals born in 1951 through 1959 have an RMD age of 73. For individuals born in 1960 or later, their RMD age is 75.

What does this mean for plan sponsors?

A change in RMD age will affect when participants are required to begin taking minimum distributions from the plan. Lincoln has been updating its materials to reflect these changes. Plan sponsors may want to work with non-Lincoln service providers to see what, if any, updates are needed.

Roth catch-up contributions for high earners

Plan sponsors that allow catch-up contributions must meet an additional requirement. Beginning January 1, 2024, employees who receive more than $145,000 in Federal Insurance Contributions Act (FICA) wages from their employer (or in total from all related employers) in the previous year must make catch-up contributions as Roth. The amount of FICA wages will be indexed for inflation.

What does this mean for plan sponsors?

The 2024 changes to catch-up contributions will be based on compensation for 2023. You may need to update payroll processes to identify affected employees and ensure these amounts are taxed and remitted to the plan correctly.

Auto-enrollment and auto-escalation features

Unless exempt, new 401(k) and 403(b) plans established after December 29, 2022, must have auto-enrollment and auto-escalation features for plan years beginning after December 31, 2024. Exceptions to these rules include small businesses with 10 or fewer employees, new businesses that are less than three years old, and church and government-sponsored plans.

Under the new law, employees who don't make an affirmative deferral election (including an election to defer nothing — 0%) will be automatically enrolled at a contribution percentage of at least 3% but no more than 10% for the first year they're automatically enrolled. Employees who were automatically enrolled will also have their deferral percentages increased by 1% each year until it reaches a minimum of 10% (but no more than 15%). Employers will have some discretion to choose the level of deferral for automatic enrollment and automatic escalation within the boundaries outlined in this paragraph.

What does this mean for plan sponsors?

You might think that this provision isn't a priority because it's not applicable for several years. However, this provision applies to 401(k) and 403(b) plans established on or after December 29, 2022. These plans will need to operate with automatic provisions as of plan years beginning in 2025. Therefore, if you're considering to start a new 401(k) or 403(b) plan for any part of your workforce, at any point before automatic features are required, it may be easier to start a plan with automatic features rather than change it prior to the required implementation date. Further, changing the design at a later point may not be practical. Some sponsors may also wish to implement automatic enrollment sooner than required. Making the change now may give them insight into how the features will affect plan nondiscrimination testing in the future.

SECURE 2.0 represents a shift in our voluntary system of retirement plans. Prior to SECURE 2.0, employers who chose to have a plan at all were free to elect or not elect automatic features. Research shows that automatic features help people save more.[1] Although current plans are grandfathered, it wouldn't be surprising if future legislation requires all plans to have automatic enrollment and automatic escalation. Additionally, the voluntary nature of plans themselves is changing; states such as California, Illinois, and Oregon have adopted mandatory retirement programs for employers that don't have established plans. Still more states are looking at studying mandatory systems of retirement or are in the process of implementing programs.

[1] "From Auto-Enrollment to Auto-Escalation to Auto-Income: How DC Plan Defaults Can Evolve to Improve American Retirement Security," Institutional Retirement Income Council, 2021, https://iricouncil.org/wp-content/uploads/2021/09/From-Auto-Enrollment-to-Auto-Escalation-to-Auto-Income.pdf.

Long-term, part-time employees participation

The original SECURE Act required 401(k) plans to allow employees who had at least 500 hours of service in each of three consecutive years to make elective deferrals (plans aren't required to offer matching or other employer contributions to this population of part-time employees). Effective for plan years beginning after December 31, 2024, SECURE 2.0 shortens this service requirement from three years to two years. SECURE 2.0 also makes ERISA-covered 403(b) plans subject to the same part-time coverage rules. Finally, SECURE 2.0 updated the vesting requirement so that plan sponsors do not have review an employee's entire work history to determine the number of plan years in which the participant was credited with 500 hours or more (for those part-time workers who later became eligible for employer contributions).

What does this mean for 401(k) plan sponsors?

It is hoped that the transition from three consecutive years as required by the SECURE Act to two consecutive years as updated by SECURE 2.0 will not involve great effort. Plan sponsors were already required to start tracking hours for plan years beginning in 2021, and the first group of such employees will be eligible in 2024. If the plan has not yet been reviewed to determine if these rules apply, then the plan sponsor should complete a review as soon as possible.

What does this mean for 403(b) plan sponsors?

If the 403(b) plan already allows all employees to make salary deferral contributions, then no changes are needed. We believe that only those 403(b) plans that exclude "employees who normally work less than 20 hours per week" will be affected by these new rules. Plan sponsors should consider the pros and cons of simply allowing any employee to elect to make salary deferrals versus having to administer the "normally works less than 20 hours per week" exclusion along with the long-term, part-time employee rules. Note that for 403(b) plans, service prior to plan years beginning in 2023 can be disregarded.

Repayment of Qualified Birth or Adoption Distributions (QBAD)

The original SECURE Act didn't set a deadline by which Qualified Birth or Adoption Distributions had to be repaid. Under SECURE 2.0, QBADs distributed on or after enactment of SECURE 2.0 must be recontributed within three years of the distribution to qualify as a rollover contribution. In addition, QBADs made before SECURE 2.0's enactment must be recontributed before January 1, 2026, to qualify as a rollover distribution. This deadline brings the rule in line with disaster relief and coronavirus-related distributions and should make administration easier because the amount of time for recontribution is the same.

What does this mean for plan sponsors?

These provisions standardize the time period to pay back QBADs and puts them in line certain other distributions such as CARES Act distributions.

EPCRS updates and penalties reduced

This is an exciting change for plan sponsors! The Employer Plans Compliance Resolution System (EPCRS) has allowed for self-correction of "insignificant" operational failures at any time for many years. However, significant operational failures were required to file with the IRS for correction if the error was not found and substantially corrected within the three-year correction period. Those that have ever filed under the Voluntary Correction Program know that this system is inflexible, time consuming, and expensive. IRS and attorney fees could run tens of thousands of dollars for some of the corrective filings and then take months (if not years) to be reviewed and approved by the IRS.

With SECURE 2.0, Congress acknowledged that inadvertent mistakes happen and gave plans the ability to self-correct inadvertent errors rather than formally applying to the IRS for correction through the Voluntary Correction Program. SECURE 2.0 also changed the self-correction rules to allow this approach anytime after an error — replacing the prior time limits for significant operational failures. There will likely be more guidance from the IRS on this issue in the future, but it is overall a positive change.

What does this mean for plan sponsors?

This provision will remove some impediments for plans to correct and keep the plan's tax-favored status. Plan sponsors will still need to follow correction processes outlined in EPCRS. However, this change represents a practical improvement for all parties involved and acknowledges the existence of inadvertent mistakes. It will also be less perilous to self-correct. Without a definition of insignificant or significant failures, this was a "facts and circumstances" determination that could be reviewed under audit. This change takes that unknown out of the equation. It may lead to more compliant plans over time.

Annual paper benefit statement requirement

SECURE 2.0 will require plan sponsors to provide at least one paper benefit statement annually for defined contribution plans and at least one paper statement every three years for defined benefit plans. This change will be effective in plan years beginning after December 31, 2025. In the meantime, plan sponsors can follow existing Department of Labor safe harbors relating to the electronic delivery of documents. Participants can prospectively opt out of this paper statement requirement.

What does this mean for plan sponsors?

Paper mailings can be costly for plan sponsors and can be inconvenient for many individuals. Plan sponsors should consider working with their providers to get employees to opt out of these paper statements. Plan sponsors should consider making opt outs for the new paper statement part of the enrollment process for new hires.

Optional provisions

Plan sponsors may want to review these optional provisions to see if they're right for their plan and plan participants. Some are effective for 2023.

Optional provision	Plans impacted	Effective date
Employer contributions made as Roth	401(a)/(k) 403(b) 457(b) gov.	Employer contributions made after DOE
Hardship self-certification changes	401(k) 403(b) 457(b) gov.	Plan years beginning after DOE
Student loans — employer match	401(k) 403(b) 457(b) gov.	Plan years beginning after 12/31/2023
Super catch-up contributions for ages 60-63	401(k) 403(b) 457(b) gov.	Tax years beginning after 12/31/2026

Employer contributions made as Roth

Before SECURE 2.0, all employer contributions to defined contribution plans were made pretax. Beginning this year, 401(k), 403(b), and governmental 457(b) plans may allow employees to designate employer matching or employer non-elective contributions as Roth. It should be noted that Roth employer contributions cannot be subject to a vesting schedule, they must be 100% vested when contributed to the plan. If the employer elects to match student loan payments (see discussion below), those amounts may also be designated as Roth. Matching and nonelective contributions that are designated as Roth will be treated as income to the employee in the year contributed.

What does this mean for plan sponsors?

Because this concept is new, we're waiting for IRS guidance on several questions. However, plan sponsors who want to allow Roth matching or employer contributions should be reviewing their payroll system and processes to ensure that a) "eligible employees" are identified (those that are at least partially vested in the respective contribution), and b) that amounts will be taxed and reported correctly.

Hardships self-certification changes

Offering hardship and unforeseeable emergency distributions is optional. Starting in 2023, employers that offer these provisions can choose to rely on participant self-certification that the requirement of immediate financial need has been met and that amounts aren't more than necessary for the deemed hardship categories listed by the Internal Revenue Code, so long as the administrator doesn't have actual knowledge the self-certification is untrue. Similarly, plan sponsors of governmental 457(b) plans will also be allowed to rely upon a participant's self-certification that an event constitutes an unforeseeable emergency under the Internal Revenue Code and that the participant has no alternative means reasonably available to satisfy the emergency need.

What does this mean for plan sponsors?

Plan sponsors may want to allow this self-certification if they believe it is appropriate for their plan participants and their participants are able to accurately make a representation about hardships or unforeseeable emergency distributions.

Because these determinations are discretionary in nature, they often are fiduciary decisions. Although it isn't frequent, sometimes hardship and unforeseeable emergency denials result in litigation against plan fiduciaries. If an employer wishes to make this change it may require reworking of processes and updates to request forms and plan materials. Plan sponsors may want to work with their service providers to see if updates will be needed.

Student loans — employer match

Before SECURE 2.0, matching contributions generally couldn't be made based on student loan repayments. Going forward, employer contributions to 401(k), 403(b), and governmental 457(b) plans may be made on behalf of employees who elect to make "qualified student loan payments" rather than elective deferrals. The employer contributions will be treated as matching contributions for plan purposes if specific requirements are met. To make administration of these provisions easier, an employer may choose to rely on a participant's self-certification, provided at least annually, of their having made student loan payments. Additionally, plan sponsors can perform the nondiscrimination test for elective deferrals separately for the group whose qualifying student loan payments are being matched.

What does this mean for plan sponsors?

Because this concept also is new, we're waiting for IRS guidance on this topic. Plan sponsors will need a process to coordinate the match if the employee makes both student loan payments and elective deferrals in the same year. The new rules will allow for an annual self-certification. Employers may wish to consider whether self-certification or confirming loan payments using a third party or on their own is appropriate for their plan.

Lincoln is partnered with Candidly, a student debt and savings optimization platform, to offer a suite of student loan services. This offering will make it easier for plan sponsors to provide and administer school loan repayment benefits.

Super catch-up provisions for ages 60-63

An employer has an option to allow catch-up contributions; if you allow them, you'll have an additional requirement. Starting in 2025, a super catch-up provision will be added for those age 60 to 63. The super catch-up amount will be the greater of $10,000 or 150% of the applicable year age 50 catch-up limit. If the 2024 age 50 catch-up limit remains at $7,500, then the super catch-up limit for 2025 would be 150% of $7,500, which is $11,250 (which is greater than $10,000). This contribution would be on top of the normal 402(g) deferral limit for 2025. These numbers will be indexed to inflation starting in 2026.

What does this mean for plan sponsors?

As with the changes required to accommodate the original age 50 catch-up rules, plan sponsors will want to make sure that their payroll system is updated for 2025 to "turn on" the increased limit for individuals who will attain ages 60-63 in that calendar year but then "turn off" the increase for calendar years after the year the individual attains age 63.

Additional thoughts about amendments and other necessary updates for plan sponsors

Plans will not need to be amended for changes immediately, as interim amendments will not be due until the beginning of 2025. Lincoln is hard at work updating relevant forms and other materials for the new rules, creating summaries and other tools for plan sponsor use, and creating notice documents that will be used to inform participants of changes when they are made. We're also in the process of developing a checklist for plan sponsors to choose what optional amendments they would like to adopt in the future.

Helping Americans build brighter futures

It's clear from these and other provisions that the SECURE 2.0 Act has built on the original SECURE Act and favors the addition of more plans, more participants, and more retirement savings. As 11 states have adopted mandatory retirement plans for certain-sized employers, one can only imagine what national legislation may come in the future. Whatever is ahead, Lincoln will be here to help you navigate the challenges.

Looking for more SECURE 2.0 resources?

We're here to help! Check out this at-a-glance overview or visit www.LincolnFinancial.com/SecureAct. Contact your Lincoln representative to see what additional support we can provide.

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LCN-5463569-021323
PDF ADA 3/23 **Z01**
Order code: DC-LGL08-FLI001

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