

# Secure 2.0 – A Detailed Summary for IRAs, Self-Directed IRAs, Solo 401(k), and 401(K) Plans

## **1. Increase in required beginning date to age 73 in 2023 and to age 75 in 2033 for mandatory distributions.**

Under current law, under the Required Minimum Distribution (“RMD”) rules, participants are generally required to begin taking distributions from their retirement plan at age 72, up from age 70 ½ in 2020. The bill would increase the RMD age from 72 to 73, up to 75, by 2033.

## **2. Catch-up contributions other than under SIMPLE plans must be made on a Roth basis.**

Under the bill, the requirement that catch-up contributions be made on a Roth basis only applies to employees whose wages (as defined for Social Security FICA tax purposes) were over \$145,000. Technically, this means that self-employed individuals (partners and sole proprietors) are not subject to the Roth catch-up requirement. This provision will become effective in 2024.

## **3. Higher catch-up contribution for individuals who are ages 60-63.**

Under current law, employees who are at least age 50 are allowed to make catch-up contributions to a retirement plan in excess of the otherwise applicable limits. The limit on catch-up contributions for 2023 is \$7,500, except with SIMPLE plans, where the limit is \$3,500. The bill would increase these limits for employees aged 60-63 (rather than 62-64 in the House bill).

These limits will increase to the greater of: \$10,000 or 50% more than the regular catch-up amount in 2025. The maximum catch-up contribution amounts will be indexed for inflation after 2025. For SIMPLE IRAs, the \$3,500 catch-up limit is increased to the greater of (i) \$5,000 or (ii) 150% of the regular catch-up, which would be \$5,250 in 2023.

## **4. Rollover of Excess 529 Assets to a Roth IRA (NEW)**

This is a new feature we think is particularly important. Under this bill, some assets in a 529 qualified tuition program can be directly rolled over tax-free to a Roth IRA. That Roth IRA must be maintained for the benefit of the beneficiary of the 529 account and rollovers would only be permitted from 529 accounts that had been

maintained for at least 15 years, but these limitations are minor in comparison to the benefits.

The rollovers would count as contributions for purposes of the limits on Roth IRA contributions, and the rollover would be subject to the requirement that the Roth IRA owner have includible compensation at least equal to the amount of the rollover. However, the income limits on Roth IRA contributions would not apply. In addition, the rollover would be limited to the aggregate amount contributed to the 529 account (plus earnings) before the 5-year period ending on the date the rollover occurs. Also, rollovers from 529 accounts would be subject to a lifetime limit of \$35,000. This provision would be effective starting in 2024.

## **5. Allowing SIMPLE and SEP contributions to be made on a Roth basis.**

Unlike 401(k), 403(b), and governmental 457(b) plans, SIMPLEs and SEPs are not permitted to offer a Roth option; instead, all contributions must be pretax. The bill would allow employers to permit employees to elect Roth treatment of both employer and employee contributions.

## **6. RMD treatment of plan Roth amounts.**

Roth IRAs are exempt from pre-death RMD rules. Under the bill, the exemption would be extended to some Roth contributions.

## **7. Indexing IRA catch-up contribution limit.**

Under the current law, the limit on IRA contributions was increased by \$1,000 for anyone at least age 50. The new bill would index these limits in the same way as regular IRAs. This provision would be effective in 2024.

## **8. Requiring automatic enrollment in new retirement plans.**

As of 2025, new 401(k) and 403(b) plans would be required to include (1) automatic enrollment at a minimum contribution of 3% (maximum of 10%), and (2) automatic escalation of the contribution rate by one percentage point per year. For safe harbor plans, the cap on permissible auto escalation would be 15%. For non-safe harbor plans, that would be 10% before 2025 and 15% after that.

Various exceptions will be established for government plans, church plans, employers with 10 or fewer employees, and new businesses that have not been in existence for three years.

- **MEPs and PEPs.** For purposes of the grandfather and exceptions, each employer in a PEP or MEP would be treated as maintaining a separate plan, so that, for example, a new employer joining a pre-enactment PEP or MEP would not be grandfathered.

- **No plan required.** This provision does not require any employer to have a plan.
- **SIMPLE plans would not be subject to this requirement.**

## **9. Saver's Match Changes.**

Beginning in 2027, the Secure 2.0 Act of 2022 would replace the Saver's Credit contributions with a federal matching contribution, deposited directly into your plan. The match would be 50% of IRA or retirement plan contributions, up to \$2,000 per person. However, some income limits, and phase-outs, would apply. Under the new legislation, the percentage is a straight 50% until the taxpayer hits the maximum MAGI under the bill, where the match phases out. So, at \$71,000 or higher for a joint filer, the match percentage is zero. In that example, contributions are treated as elective and (1) are not taxable income to the individual, (2) does not count against any applicable limits on contributions.

## **10. Retirement Savings Lost & Found.**

Sometimes, people are unaware of the benefits they have already earned — often because the company they worked for moved, changed its name, or merged with a different company. Accordingly, the new bill establishes a Retirement Savings Lost and Found registry to help participants find their benefits.

## **11. Cash-Out Limit – Safe Harbor IRA..**

The bill would increase the cash-out limit to \$7,000 for plan distributions for involuntary distributions. This would be effective for distributions beginning in 2024.

## **12. Finance Emergency Savings.**

In 2024, an emergency distribution from a retirement plan (other than a defined benefit plan) or from an IRA will not be subject to the 10% early distribution tax generally applicable. This kind of emergency distribution is permitted once per calendar year. The idea is that individuals should have a base of retirement savings, a bare minimum of \$1,000, before they should be able to make emergency withdrawals. These limits apply at the individual level, not at the plan or IRA level. So, for example, if an individual has taken an emergency distribution from any IRA in a year, they cannot take another emergency distribution during that year.

## **13. Emergency Saving Proposal.**

One proposal found in the new legislation is a cap of \$2,500 on an emergency savings account. Here, the account must be part of a defined contribution plan, where contributions are almost always treated as Roth contributions. Distribution of earnings are always not taxable. While contributions must be invested in a principal preservation

investment, generally speaking, withdrawals can be made at any time, penalty-free. Highly compensated employees are not permitted to contribute.

#### **14. New 401(k) Start-Up Credit.**

Current law offers a tax credit to a small business (up to 100 employees) that adopts a new qualified plan equal to the lesser of (1) 50% of the employer's start-up costs, or (2) \$5,000. Under the new law, that 50% would be increased to 100% for businesses with 50 or fewer employees. The bill also includes the following new type of start-up tax credit:

- Except in the case of defined benefit plans, an additional credit to the applicable percentage of the amount contributed by the employer on behalf of employees, up to a per-employee cap of \$1,000 is established.
- This additional credit will be limited to employers with 100 or fewer employees and gets phased out for employers with between 51 and 100.

#### **15. Matching and non-elective contributions permitted to be made on a Roth basis.**

Under the bill, employees may elect some or all of their vested matching and non-elective contributions to be treated as Roth contributions under a 401(k), 403(b), or governmental 457(b) plan. This provision is effective immediately, so it could even implicate your 2022 tax strategy.

#### **16. Treatment of IRA prohibited transactions.**

Under current law, if an IRA owner engages in a prohibited transaction, the IRA is deemed disqualified. The new bill would limit the disqualification to the transaction involved in the prohibited transaction.

#### **17. Treatment of student loan payments as elective deferrals for purposes of matching contributions.**

For purposes of the nondiscrimination testing and safe harbor rules, an employer can make matching contributions under a 401(k) plan, 403(b) plan, or SIMPLE IRA as "qualified student loan payments" under the new law. Governmental employers can also make matching contributions in a section 457(b) plan as to some student loan repayments. This provision would be effective in 2024.

#### **18. Small immediate financial incentives for contributing to a plan.**

Under current law, immediate incentives for making 401(k) contributions (e.g., gift cards) are prohibited. This is likely to change under the new bill, which has

provisions to allow de minimis financial incentives under 401(k) and 403(b) plans without triggering a prohibited transaction under the Code or ERISA.

### **19. Self-certification of hardship.**

Under the bill, employees, for the first time, would be allowed to self-certify that they have had a deemed hardship allowing a hardship withdrawal from a 401(k) plan or a 403(b) plan.

### **20. Reducing 50% penalty tax on RMDs.**

Currently, if you fail to take minimum distributions, you are subject to a 50% tax. The new bill reduces that tax to 25%. Even though that tax is still substantial, it is certainly an improvement. If this kind of failure is corrected in a timely manner, the tax is further reduced to 10%.

### **21. The final bill permits certain penalty-free withdrawals in the case of domestic abuse**

This provision would be effective for distributions after 2023.

### **22. Long-term part-time workers: three years to two years**

Secure 2.0 generally requires most 401(k) plans to have a dual eligibility requirement, under which an employee must complete either a one year of service requirement (with the 1,000-hour rule) or three consecutive years of service where the employee completes at least 500 hours of service. This provision would be effective in 2025.

### **23. Penalty tax exception for terminally ill individuals**

Under the bill, an exception to the 10% early withdrawal tax applies when distribution is made a terminally ill employee.

### **24. SIMPLE contribution limit for Employers with up to 25 Employees**

Effective in 2024, for employers with up to 25 employees, the limit on employee contribution would be increased annually.

### **25. No penalty tax on distributions of income on excess IRA contributions**

The 10% early distribution tax would not apply to distributions of earnings on non-deducted excess IRA contributions. Further, the statute of limitations would only start running once a return has been filed indicating an excess contribution. Of interest, the bill does not address the issue of statute of limitations for prohibited transactions.