

The SECURE 2.0 Act : Part 2

DB Plans, SIMPLE, IRA, 403(b)/457 plans



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The SECURE 2.0 Act

On December 29, 2022, the SECURE 2.0 Act was included as part of a larger omnibus spending package, the Consolidated Appropriations Act, 2023. The legislation contained 92 provisions which are retirement plan related. We have pulled together a summary of the Provisions below. Plan amendments made pursuant to SECURE 2.0 are to be made by the end of 2025 (2027 in the case of governmental plans) as long as the plan operates in accordance with such amendments as of the effective date of a bill requirement or amendment and also extended SECURE 1.0 and CARES amendment deadlines. In later articles, I will be describing the various Sections of the Act, the practical impact of each Section and the due dates for implementing the changes.

Provision	Description	General Effective Date
403(b): Allowed to Invest in CITs	Allows employers with 403(b) plans, including public schools and tax-exempt organizations, to structure their retirement plans as collective investment trusts. NOTE: the proposal is applicable to amounts invested after enactment-but practically not (yet) available under legislation to address securities law.	2022
403(b): Hardship Rules for 403(b) Plans	Conforms the hardship distribution rules for section 403(b) plans to those of section 401(k) plans. In addition to elective deferrals, may distribute, on account of an employee's hardship, qualified nonelective contributions, qualified matching contributions, and earnings on any of these contributions (including on elective deferrals).	2024, Plan Year Beginning

403(b): MEPs	403(b) plans, other than church plans, may form MEPs. No inference for church plans. Provides unified plan relief if MEP satisfies requirements similar to 413(e) (the PEP rules). Governmental plan gets relief even if commonality requirements are not met. Treasury in consultation with DOL must provide education and outreach on fiduciary duties.	2023, Plan Year Beginning
457(b): Eliminate "First Day of the Month" Requirement for Governmental Plans	Plan may permit participants in 457(b) plans to change their contribution election at any time. Not allowed for tax-exempt organizations.	2023, Tax Year Beginning
DB: 401(h) Accounts	Extends the sunset for using assets from an overfunded pension plan to pay retiree health and life insurance benefits. The sunset would be 2025 and this extends it to 2032; and it permits transfers to pay retiree health and life insurance benefits provided the transfer is no more than 1.75% of plan assets and the plan is at least 110% funded. Effective after date of enactment.	2022
DB: Annual Funding Notices - Required	Change to content requirements.	2024, Plan Year Beginning

DB: Cash Balance Testing - Required	For 411(b) accrual rule tests, may use a reasonable projection of interest crediting rates; capped at 6%.	2023, Plan Year Beginning
DB: Mortality Tables - Required	Generally, requires that for purposes of the minimum funding rules, a pension plan is not required to assume mortality improvements at any age greater than 0.78%. Effective after date of enactment. Regulations required with 18 months.	2022
DB: Variable Rate Premium - Required	No indexing of variable rate premium after 2023; flat \$52 per \$1000 of unfunded vested benefits.	2024, Plan Year Beginning
Group of Plans (GoPs) - Not Required	Any 103(a)(3)(C) audit applies only to large plans.	2022
IRAs: Elimination of Penalty	Exempts excess contributions to IRA (and earnings) that are timely returned from the 10% tax on early distributions.	2022

IRAs: Indexing IRA Catch-up Limit - Required	Catch-up contribution limit to IRAs for those aged 50 and over (currently \$1,000) would be indexed to inflation after 2023 (base is 2022; intervals of \$100).	2024, Tax Year Beginning
IRAs: Limiting Cessation of IRA Treatment to Portion of Account Involved in a PT	The provision modifies the disqualification rule that applies when an IRA owner or beneficiary engages in a prohibited transaction so that only the IRA that is used in the prohibited transaction is treated as distributed to the individual.	2023, Tax Year Beginning
IRAs: Limiting Cessation of IRA Treatment to Portion of Account Involved in a PT	The provision modifies the disqualification rule that applies when an IRA owner or beneficiary engages in a prohibited transaction so that only the IRA that is used in the prohibited transaction is treated as distributed to the individual.	2023, Tax Year Beginning
IRAs: Long-term Tuition to Roth	Tax and penalty free rollovers from 529 accounts to Roth IRAs, under certain conditions. Beneficiaries of 529 accounts permitted to rollover up to \$35,000 (lifetime limit). Subject to Roth IRA annual contribution limits, and the 529 account must have been open for more than 15 years.	2024

IRAs: Tax Penalties Statute of Limitations Clarification	Starts the statute of limitations on assessments on IRA penalties when the taxpayer files his or her individual tax return.	2022
PEP: Pooled Employer Plans (PEP) Modification	Permits PEP to designate a named fiduciary (other than an employer in the plan) to be responsible for collecting contributions. Other fiduciary required to implement written contribution collection procedures that are reasonable, diligent, and systematic. Prior to change, duty to collect and hold assets had to be a trustee approved under 408(a)(2).	2023, Plan Year Beginning
Public Safety/Military: Corrections Officers Eligible for 10% Penalty Exemption	Extends the public safety officer exception to the 10% early distribution tax to corrections officers who are employees of state and local governments. Effective after date of enactment.	2022
Public Safety/Military: Firefighter Distributions	Extends the exception to 10% penalty to distributions after age 55 for qualified public safety employees to apply to distributions from a qualified retirement plan or section 403(b) plan to an employee who provides firefighting services.	2022

Public Safety/Military: First Responder Retirement Plan Disability Payment Exclusion	Disability payments to first responders from retirement plans would be excluded from income after reaching retirement age.	2027, Tax Year Beginning
Public Safety/Military: Public Service Officers with 25 years of Service Eligible for 10% Penalty Exemption	Extend the exception from 10% penalty to public safety officers with at least 25 years of service with the employer sponsoring the plan (current exemption is age 50 regardless of service).	2022
Public Safety/Military: Small Employer Retirement Plan Eligibility Credit for Military Spouses - Not Required	Tax credit to small employers (using SEP definition of under 100 EEs) who offer NHCE military spouses a retirement plan with enhanced eligibility rules and an accelerated vesting schedule. The credit of up to \$500 per military spouse would apply for first 3 years of participation (\$200 for eligibility; \$300 for ER contributions).	2023, Tax Year Beginning
SIMPLE and SEP: Roth Permitted – Not Required	Under the provision, a SEP and a SIMPLE IRA are permitted to be designated as Roth IRAs.	2023, Tax Year Beginning
SIMPLE: Additional Employer Contributions – Not Required	SIMPLE plans require employer contributions of either 2% of compensation or 3% of employee elective deferral contributions. This provision would permit an employer to make additional contributions up to the lesser of 10% of compensation (limited by 401(a)(17)) or \$5,000 (indexed after 2024).	2024, Tax Year Beginning

SIMPLE: Adopt 401(k) Mid-Year	Employers allowed to replace simple retirement accounts with safe harbor 401(k) plans during a year. Allows an employer to replace a Simple IRA plan with a simple 401(k) plan or other 401(k) plan that requires mandatory employer contributions during a plan year. Limits pro-rated based on days in effect. Rollovers into 401(a) or 403(b) plan not subject to 2-year penalty tax.	2024, Plan Year Beginning
SIMPLE: Increase Limits - Required	This provision increases the annual deferral limits to 110% of the 2024 limit on deferrals (indexed after 2024) in the case of an employer with no more than 25 employees. An employer with 26 to 100 employees would be permitted to provide these higher deferral limits, but only if the employer either provides a 4% matching contribution or a 3% employer contribution. Employer cannot have had plan within 3 years. Effective after 2023. Treasury must provide report on SIMPLE Plans.	2024, Tax Year Beginning
Starter 401(k)	Permits an employer that does not sponsor a retirement plan to offer a starter 401(k) plan (or safe harbor 403(b) plan). Requires that all employees be default enrolled in the plan at a 3% to 15% of compensation deferral rate. Could exclude union, non-resident aliens, and age/service excludable. No employer contributions permitted. The limit on annual deferrals is \$6,000 with an additional \$1,000 in catch-up contributions beginning at age 50. Indexed after 2024. No ADP or top-heavy testing required. Future technical correction: Text doesn't match summary/intent. Summary says limits will match IRA limits, but the text limits deferrals to \$6,000 rather than picking up the increased IRA limits for future years.	2024, Plan Year Beginning

Tax Credit: Small Employer Pension Plan Start-up Credit for Adopting MEP	Clarifies that the start-up credit is available if an employer is adopting its first plan by joining an existing MEP.	2020, Tax Year Beginning
Unclaimed Savings Bond	Amend USC Title 31 to require Treasury to share certain information relating to the registered owners of matured and unredeemed savings bonds with the States to enable the States to locate the owners in accordance with the States' standards for recovery of abandoned property.	2022