



IRS Nationwide Tax Forum | 2023

Retirement Plan Distributions after SECURE 1.0 and SECURE 2.0

Today our presentation will discuss

- Overview of the SECURE 1.0 & 2.0 changes
- Enhanced tax credits for plans
- New disaster distribution rules
- Changes to RMDs for account owners & beneficiaries
- New exemptions to the 10% tax on early distributions
- 401(k) and other changes



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Overview / Background the SECURE Acts

SECURE Act 1.0 & 2.0

- **SECURE 1.0 (2019)**
- **SECURE 2.0 Act (2022)**
 - 92 retirement-related provisions
 - Some provisions are technical corrections, retroactive as if in the original law
 - Some add/change original SECURE 1.0 provisions, new effective dates
 - Many entirely new provisions
 - Expecting guidance to further explain how these provisions work



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Enhanced Tax Credit

Enhanced Tax Credits for New Plans

- Plans started in 2023, credit of 100% of administrative costs, ranging from \$500 - \$5,000
- Additional 100% credit up to \$1,000 per employee for employer contributions to employees earning <\$100,000 the first year of the plan
 - Credit decreases 25% each of the following 3 years
- Employers with 51-100 qualifying employees may qualify for a lesser credit



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Disaster Relief

Disaster Relief: History

- SECURE 2.0 made a major change to the special disaster-related rules for retirement plans and IRAs
- Historically, Congress granted relief disaster-by-disaster
- Taxpayers affected by a disaster had to wait and see what Congress might do
- Some disasters were granted special relief while similar disasters were not

Disaster Relief: SECURE 2.0

- No longer need to wait for Congress to pass disaster relief
- SECURE 2.0 relief effective for qualified individuals affected by major disaster occurring after January 26, 2021.
- Expanded distribution, favorable tax treatment for qualified disaster recovery distributions
 - From eligible retirement plans (401(k) and 403(b)), and IRAs
- Relief: distribution to purchase or build principal residence
- Plan loan relief

Disaster Relief: Definitions

- Qualified disaster
 - Major disaster occurring after Jan. 26, 2021
 - Major disaster declared by the President after Dec. 27, 2020
 - Filter FEMA search tool for major disaster declaration for Federally declared major disaster areas
- Qualified individual
 - Principal residence located in qualified disaster area
 - Sustained an economic loss due to that disaster

Disaster Relief: Distributions

- Favorable tax treatment for up to \$22,000 of qualified disaster recovery distributions to a qualified individual
 - From employer sponsored eligible retirement plans and IRAs
- Repay within 3-year period starting day after distribution
 - Repay to eligible retirement plan
 - Treated as a direct trustee to trustee transfer
 - If repay timely, no federal tax owed on distribution
- Relief for distribution purchase or build principal residence

Disaster Relief: Reporting

- Qualified individuals make determination that a distribution is a qualified disaster relief distribution (QDRD)
- Report QDRD on Form 1040, and include Form 8915-F
 - Include the taxable portion of the distribution in income ratably over the three-year period, beginning with the year of the distribution, or
 - Make an election on Form 8915-F to take the entire distribution into income during that first year

Disaster Relief: Loans

- Loan relief available for loans from retirement plan (no loans allowed in an IRA)
- May delay loan repayments for up to a year
- Loan limits may be increased to \$100,000 (from \$50,000 max)
- Plan is not required to add disaster loan relief



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Required Minimum Distributions

SECURE 1.0 Act: RMDs

- Age of required beginning date raised to 72
- Effective for anyone turning age 70 ½ in 2020 (would turn age 70 after June 30, 2019)
- Also, 2020 RMD waived under CARES Act

SECURE 1.0 Act: Beneficiary RMDs

- For account holder deaths occurring after 2019, beneficiaries have a new 10-year distribution requirement
 - A new class of “eligible designated beneficiaries” still have a lifetime option
 - Notice 2022-53: Granted relief for beneficiaries subject to the new 10-year rule
 - IRS will not treat an inherited account in a plan or IRA that failed to take the specified RMD in 2021 and 2022 as having failed to satisfy the RMD rules merely because it failed to make that distribution

SECURE 2.0 Act: RMDs Age 72/73

- Reach age 72 in 2022 – subject to age 72 rule
- Reach age 73 in 2023 – subject to age 72 rule
- Reach age 73 in 2024 – subject to age 73 rule
- Take RMD from one or more IRAs
- Must take RMDs separately from each retirement plan
 - Delay taking RMDs from workplace retirement plan until retirement
- Lower excise tax rate (25% or even 10%) if timely corrected
- Qualified Charitable Distributions: Still based on age 70½

SECURE 2.0 RMD RBDs

Birth year	First RMD due for	Age at first RMD
6/30/1949	2019	70 ½
7/1/1949 –12/31/1949	2022	72
1950	2022	72
1951	2024	73
1959	2034	75

SECURE 2.0 Act 2023 Relief

- Notice 2023-54: relief for certain RMD requirements on account of year 2023 RMDs
- Permits amounts mistakenly characterized as RMDs to be eligible for rollover up to September 30, 2023, even if otherwise beyond the 60-day window
- Provides that plans and IRAs won't fail RMD requirements (or be subject to excise tax) for failing to deliver 2023 RMDs to certain inheritees (generally those on the 10-yr rule)



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Early Distribution Exceptions

10% Additional Tax: Background

- Plan distributions to recipients under age 59½ (or separated from service before age 55) are subject to 10% additional tax, unless an exception applies
- Around 25 exceptions, in addition to the death, disability and substantially equal payments exceptions.
- Some exceptions may only apply to an IRA account, others only to an account in a retirement plan

New 10% Additional Tax Exceptions

EVENT	Exception?
Qualified birth or adoption distribution	Yes
Emergency expenses up to \$1,000	Yes
Distribution from pension-linked emergency savings account	Yes
Terminal illness	Yes
Qualified disaster recovery distribution	Yes
Distribution to purchase long-term care insurance	Yes
Firefighter age 50	Yes



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401(k) and Other Changes

Starter 401(k) Plans

Plan years beginning after December 31, 2023

- New category of safe harbor 401(k) plan - No ADP or top-heavy testing
- Elective salary deferrals only
- Auto enrollment between 3% - 15% deferral rate
- Deferral limit = \$6,000 (indexed)
 - Limit is set at IRA contribution limit, not the 402(g) limit
 - Plus \$1,000 age 50 catch-up, same as with IRAs

Mandatory auto-enrollment

New 401(k) plans must include auto enrollment feature [2025]

- Initial elective deferral amount from 3% to 10%
- Increased annually thereafter on the first day of the plan year by 1%, until at least 10%, not more than 15%
- Employee can always opt out of being auto-enrolled

Exceptions:

- Plans established before 12/29/2022
- Small business that “normally” employees 10 or fewer employees
- New employer in existence < 3 years
- Church and govt. plans.

Long-term part-time employees

- **Prior law:** No differentiated 401(k) eligibility: “21 & 1”
- **Current law:** SECURE Act 2.0 adds to new criteria for ‘long-term, part-time’ employee eligibility originally put in SECURE 1.0
- Plan must allow employees with **2 consecutive years of 500 hours of service** to participate in 401(k) feature
 - Earliest deferrer under this would be next year, 1/1/2024
 - Pre-2021 service disregarded for vesting purposes & eligibility
 - Aim is to get ‘gig workers’ into retirement savings system

Retroactive First Year Deferrals

- **SECURE 1.0:** Adopt plan retroactively by due date of tax return (plus extension) in the following year
 - No deferrals before election to defer (see plan terms)
- **SECURE 2.0:** Sole proprietor can adopt a new 401(k) plan in the following year, make deferrals for the prior year
 - First year of plan only
 - Sole proprietor must be the only employee
 - Deferrals must be made before filing due date of individual return (without regard to extensions)

Catch-up: New Age 60 to 63 Tier

Plan years beginning after December 31, 2024

- Age 60-63 next tier of higher catch-up limits:
 - Individuals who attain age 60, 61, 62 or 63 during the year
- Limit is greater of:
 - \$10,000, or
 - 50% more than the regular age 50 catch-up amount
 - Example: 401(k) catch-up limit = \$7,500
 - Age 60-63 tier = \$11,250

Roth only Catch-up for high earners

Plan years beginning after December 31, 2024

Current law: Catch-up salary deferrals in a 401(k) or 403(b) plan can be made in either ‘traditional’ (pre-tax) or Roth form, depending on plan design

SECURE 2.0: For employees with FICA wages for the preceding year that exceed \$145,000, catch-up contributions can only be made to a designated Roth account

- HCE catch-ups must go in as Roth, NHCEs as traditional or Roth
- Plan may not permit catch-up contributions unless high earners have a Roth option

Roth Option

Matching and Employer Contributions

- **Prior law:** Roth account was limited to elective salary deferrals, related earnings
- **SECURE 2.0:** Plans can now offer option to designate matching or nonelective contributions (such as profit-sharing contributions) as Roth contributions
 - Plan document must first allow this Roth option
 - Roth employer contributions are taxable income to the employee
 - Fully vested when made

Matching Student Loan Repayments

Plan years beginning after December 31, 2023

- Employer recognizes self-certified student loan repayments as if they were elective salary deferrals in employer's plan
- Employer match is based on this "deemed" deferral amount
 - Deemed deferral amount plus actual salary deferrals must be less than 402(g) limit
 - Must vest in the same manner as salary deferral match
- ADP test may apply separately to employees receiving student loan match

Emergency Savings Accounts

- Plan can offer NHCEs a default emergency savings account linked to defined contribution plans
- Employers may automatically enroll employees at $\leq 3\%$ of pay, capped at \$2,500 (or lower as set by the plan)
- Once the cap is hit, additional contributions can be stopped or go to plan's Roth account (if plan has Roth feature)
- Contributions are made on a Roth-like basis and are treated as elective deferrals

Family Attribution changes

- **Plan years beginning after December 31, 2023**
- **Current law:** In a community property state, a spouse is treated as the direct owner of stock owned by the other spouse. Stock owned by a minor child is attributed to the parent under IRC 1563.
- **SECURE 2.0:** Disregards ‘community property’ rule and limits attribution from a child to parent’s spouse to a situation where the child acquires stock from the parent.
 - Avoids having a controlled group between spouses with minor children or in community property states



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Resources

- [IRS.gov/retirement](https://www.irs.gov/retirement)
- [IRS.gov/RMD](https://www.irs.gov/RMD)
- [IRS.gov/RMDbeneficiary](https://www.irs.gov/RMDbeneficiary)
- [IRS.gov/PlanDisaster](https://www.irs.gov/PlanDisaster)