PENTEGRA
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Second Quarter 2023

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Key Takeaways from SECURE Act 2.0

Overview

SECURE Act 2.0 of 2022 made many changes to 401(k)s and other types of retirement plans. Overall, these changes were designed to enhance the retirement plan experience for millions of participants. Features such as matching student loan payments, emergency savings accounts and Saver's Match (formerly "Saver's Credit") contributions will help middle- and low-income participants augment their retirement savings and, ultimately, their retirement security. In addition, plan sponsors are given additional flexibility in making plan corrections and the new bill increased tax credits for startup plans, among other enhancements.

That said, SECURE Act 2.0 is an enormous piece of legislation, and this overview makes no attempt to cover all of its retirement plan provisions; rather, we opine on several key elements we feel are the most impactful to the retirement plan environment overall.

These enhancements come with a price. Many features will increase the complexity of 401(k)s and other types of retirement plans, requiring additional effort on plan sponsors and service providers to ensure plans are operated correctly.

1. Provision: Student loan matching
   Plan sponsors are permitted to match certain student loan payments.
   Applicability: This will be a popular feature for plan sponsors with employees carrying student loan debt. Employees receive matching contributions based on student loan payments as though the loan payments were plan deferrals. This feature will likely be popular among participants, and plan sponsors will likely use it as a hiring and retention strategy.

2. Provision: Emergency savings accounts
   Plans can permit non-highly compensated employees to contribute up to $2,500 into an emergency savings account within the plan. Employees may access the emergency savings accounts periodically. The emergency savings account contributions are considered a type of Roth contribution.

   The emergency savings account feature has the potential to enhance the financial wellness of participants and their families. In addition, our view is that this feature will ultimately reduce hardship disbursements and perhaps even plan loans.

3. Provision: Saver's Match Contributions
   The Saver's Match provision allows low- and middle-income plan participants who were previously eligible for the Federal Saver's Credit to have federal matching contributions deposited directly into a retirement plan as an additional contribution source.

   The Saver's Match contribution allows participants to augment retirement accumulations rather than spend an income tax refund. This provision can enhance retirement accumulations for those who, likely, need the most help. This feature will increase the complexity of plan operations with additional data feeds and financial linkages between the plan and federal entities.

4. Provision: Treatment of matching and other employer contributions as Roth amounts
   Effective immediately, this feature permits participants to treat matching and other employer contributions as Roth contributions.

   This provision will be popular among higher-income participants with large balances in qualified arrangements pursuing a Roth strategy. Clearly, this provision will be a challenge from a recordkeeping perspective, but our view is that the provision will rapidly gain popularity once the tax community becomes facile with its implications and opportunities.

5. Provision: Less stringent controlled group rules

Businesses under common ownership or control are subject to the controlled group rules. The controlled group rules require additional, often complex, testing and aggregation and, frequently, restrict a plan sponsor's flexibility with respect to plan contributions and increase plan costs.

SECURE Act 2.0 relaxes certain controlled group rules, particularly for smaller family-owned businesses, by reforming the family attribution rules for ownership. This provision provides more flexibility and planning opportunities for small business owners.

More thoughts and insights will be forthcoming as we delve into the many layers of SECURE Act 2.0.

Automatic Enrollment/Escalation—Is My Plan Grandfathered?

We knew it was coming—some type of auto enrollment and auto escalation mandate for 401(k) and 403(b) plans. Congress has long been a proponent of such automatic arrangements as they have proven they boost plan participation. The first "negative election" plans go back 25 years to 1998, when the IRS issued Revenue Ruling 98-30. Automatic escalation soon followed as did automatic investment. Some have even referred to this evolution as the systematic "DB-ification" or "pensionization" of 401(k) plans.

We know that automatic plan features help drive better plan outcomes. Section 101, "Expanding automatic enrollment in retirement plans," of the newly enacted SECURE Act 2.0 of 2022 is intended to build on that idea. Beginning with the 2025 plan year, newly established 401(k) and 403(b) plans must automatically enroll employees in a certain type of eligible automatic contribution arrangement (EACA) upon meeting plan eligibility. However, some plans and business types are exempt from the requirement, including businesses with "grandfathered" plans.

The question then becomes, "Is my plan grandfathered?" You might be surprised to learn that it may not be. Consider the following example.

Planning Plus, Inc., established a new 401(k) plan effective 1/1/2023. The plan does not have an automatic enrollment feature. Is Planning Plus's 401(k) plan grandfathered for purposes of the auto enrollment/escalation mandate?

The answer is, "no." Grandfathered plans, for this purpose, are defined as all current 401(k) and 403(b) plans *established prior to 12/29/2022*—the date of SECURE 2.0's enactment. Consequently, even though Planning Plus established a plan before the date by which most new plans must include a SECURE 2.0 EACA (i.e., by the 2025 plan year), the plan does not meet the definition of grandfathered for purposes of an exemption. Therefore, Planning Plus will have to incorporate the EACA by the 2025 plan year unless, of course, one of the other exemptions applies. Both the EACA and exemptions appear next.

For Year 1, the enrollment amount must be least 3% and may go up to 10%. For Years 2-8, the deferral amount is increased by one percentage point until it reaches at least 10%, but not more than 15%.[1] Participants may opt out or elect another percentage.

The following plans are exempt:

- Grandfathered plans (i.e., all current 401(k) and 403(b) plans established prior to 12/29/2022—the date of SECURE 2.0's enactment)
- Businesses with 10 or fewer employees
- Businesses in existence for less than 3 years
- Church plans
- Governmental plans

Other details include:

- Deferrals must be invested in a qualified default investment alternative (QDIA) unless the participant elects otherwise.
- Participants can withdraw auto-deferrals made during a 90-day period after initial deferral.
- The provision applies to employers adopting a multiple-employer plan (MEP) after 12/29/2022, even if the MEP was established before that date.

The auto enrollment/auto escalation requirements for new 401(k) and 403(b) plans included in SECURE 2.0 might be a "gotcha" moment for some plan sponsors. With over 90 provisions in the new law, there is so much to uncover. We can help you avoid being caught off guard by what lies buried in the fine print of SECURE 2.0.

[1]Nonsafe-harbor plans are capped at 10% until the 2025 plan year

Pentegra Consulting Support Case Study—Plan Document Compliance

One of the most critical legal responsibilities of a plan sponsor is to ensure the governing documents for the business's qualified retirement plan are current for all law and regulatory changes. Failure to keep the plan language current could result in disqualification of the plan, resulting in serious tax consequences. For the plan sponsor, plan disqualification could mean loss of tax deductions for contributions and potentially significant penalties.

For plan participants, plan disqualification could mean the loss of tax-favored status for their contributions and earnings, resulting in unexpected taxable income.
The IRS assists plan sponsors who have adopted an IRS pre-approved plan document with the plan refresh process by routinely requiring them to update their plans according to a "restatement cycle." Each restatement cycle (e.g., six years for defined contribution plans) provides a window for affected employers to adopt an up-to-date plan document. The most recent restatement deadline for pre-approved defined contribution plans was July 31, 2022.

Missed Restatement Deadline
Pentegra discovered, through its work with several pre-approved plan document providers, that a number of plan sponsors had missed the July 31, 2022 plan restatement cycle deadline—now what? One of Pentegra's Custom Plan Consultants knew exactly how to address the problem. According to the IRS, the plans are not immediately disqualified.

While they can no longer rely on the IRS's original opinion letters that stated they meet the requirements of pre-approval, the plans do remain afloat as individually designed plans, potentially.

The catch is the plans must be reviewed to determine if they are in compliance as to form as individually designed plans. This is something the Custom Plan Consulting team does as well as Pentegra's Legal Department. If a plan is found to be non-compliant, it must be corrected under the terms of the IRS's Employee Plans Compliance Resolution System (EPCRS). If a defect in the plan's language existed for fewer than the prior three years, sponsors can correct them without an IRS filing or fee under EPCRS's Self-Correction Program (SCP). For older defects, however, sponsors must file a Voluntary Correction Program (VCP) application along with a fee with the IRS to correct the failure. That's where Pentegra comes in.

VCP Correction Assistance

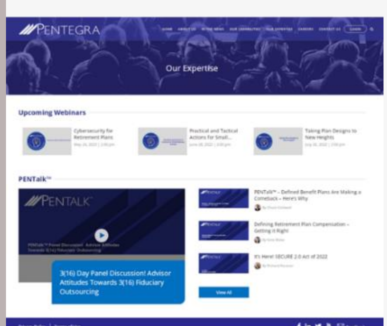
Pentegra routinely assists plan sponsors with VCP submissions, including those that relate to plan restatement mishaps. If the correction is for a missed restatement, it takes Pentegra, on average, two to three hours to compile and submit the VCP application. In these scenarios, the standard elements of a VCP submission include several required IRS forms (e.g., Form 2848, Power of Attorney and Declaration of Representative, Form 8821, Tax Information Authorization, model compliance statements that are specific to the failure, typically, Form 14568, Model VCP Compliance Statement and Form 14568-B, Model VCP Compliance Statement - Schedule 2: Other Nonamender Failures and Failure to Adopt a 403(b) Plan Timely). In the case of a missed document restatement, our Custom Plan Consulting team underscored the necessity of providing the IRS with the previous, timely signed, adoption agreement, along with the document that was not timely signed. After all documents have been submitted, Pentegra may also need to interact with the IRS on behalf of the plan sponsor.

Regarding VCP fees, they typically run from $1,500-$3,500. The IRS fee is based on plan asset size with $1,500 for plans with under $500,000 in assets and $3,500 for plans with over $10,000,000 in assets.

The length of time from start to receipt of acceptance letter is dependent upon the IRS agent. From Pentegra's experience, the average turnaround time for acceptance letters has been about two months. However, there have been instances where the IRS took over a year.

Pentegra's Results

To date, the Custom Plan Consulting team has helped plan sponsors with over 40 VCP plan restatement filings and they are already seeing the fruits of their labor in several IRS acceptance letters. Each acceptance letter means the plan is safe (i.e., brought back into compliance), thereby preserving the plan's tax-favored status for the plan sponsor and its participants. That's a win for everyone involved.



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