

January 12, 2023

SECURE 2.0 Act of 2022 Makes Big Changes to Retirement Plans



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The Consolidated Appropriations Act, 2023 ("Appropriations Act") was signed by President Biden and became law on December 29, 2022. Included in the Appropriations Act is the SECURE 2.0 Act of 2022 ("Secure Act"), which includes various changes affecting retirement. Highlighted below are some of the key provisions of the Secure Act.

Increase in Age for Required Minimum Distributions

Prior to the changes made by the Secure Act, an owner of a traditional IRA account was required to begin taking distributions from the IRA ("RMDs") by April 1 of the calendar year following the year in which the account owner attained age 72. Under the Secure Act, an account owner who attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033, is not required to take the first RMD until April 1 of the calendar year following the year he or she attains age 73. Also, an account owner who attains age 74 after December 31, 2032, is not required to take the first RMD until April 1 of the calendar year following the year he or she attains age 75.

For employer-sponsored qualified retirement plans, such as 401(k) plans, under both pre-Secure Act law and under the Secure Act, the RMDs for an account owner¹ whose employment with the employer maintaining the plan has not terminated, is deferred until April 1 of the calendar year following the later of (a) the year in which he or she would otherwise be required to take an RMD because he or she has reached the age described in the previous paragraph, or (b) the year in which such employee's employment with the employer maintaining the plan is terminated.

Indexing of IRA Catch-up Limit

Under pre-Secure Act law, individuals age 50 and older were allowed to make catch-up contributions to their IRAs and employer-sponsored retirement plans. Although the IRA catch-up limit was not indexed for inflation, the employer-sponsored retirement plans catch-up limit was indexed for inflation. Under the Secure Act, the IRA catch-up limit for all individuals who are qualified to make a catch up contribution to an IRA, is indexed for inflation for tax years beginning after December 31, 2023.

Increased Catch-up Limit at Ages 60-63

Other than increases in contributions to IRAs due to indexing for inflation as discussed above, the catch-up limits for individuals age 50-59 remains the same under the Secure Act as it was under pre-Secure Act law². It also remains the same for individuals age 64 and older. As a result of changes made by the Secure Act, for tax years beginning in 2025, a higher catch-up limit will apply for employer provided retirement accounts, for individuals who attain age 60-63 before the end of the taxable year. An individual who attains age 64 before the end of the taxable year does not qualify for the higher catch-up limit. The higher catch-up limit is the greater of (a) \$10,000 or (b) 150% of the regular catch up amount in 2024. Both of these higher catch-up limit amounts will be indexed for inflation beginning in 2026 in addition to the regular catch-up limit that is already indexed for inflation. Under the Secure

Act, all catch-up contributions made by an individual whose wages³ from the employer sponsoring the plan exceed \$145,000 (as indexed annually for inflation) must be contributed to an employer-sponsored Roth account. If an employer has an employee who exceeds this wage limitation and who desires to make a catch-up contribution, that employer's plan must provide its participants with the ability to make designated Roth contributions, or will be forced to separately include and account for designated Roth contributions, which will be more administratively burdensome.

Surviving Spouse Election to be Treated as Employee

Under the Secure Act, if an employee dies before he or she is required to take his or her first RMD, and the employee's surviving spouse is the designated beneficiary, the surviving spouse may elect to be treated as if he or she were the employee for purposes of the RMD rules, allowing the surviving spouse to stretch out the RMDs over the surviving spouse's lifetime and defer RMDs until the surviving spouse is required to take his or her first RMD⁴. Prior to the Secure Act, the only option the surviving spouse would have had to defer RMDs until the surviving spouse's required beginning date, would have been to roll over the retirement account balance to the surviving spouse's own IRA. Now, the surviving spouse has an alternative option. The date on which RMDs must begin if this election is made is the later of (a) December 31 of the year in which the employee would have attained the applicable age, or (b) April 1 of the calendar year following the calendar year the surviving spouse attains the applicable age.

If an account owner of an employer-sponsored qualified retirement plan dies after he or she is required to take his or her first RMD and the account owner's surviving spouse was the designated beneficiary, the surviving spouse's only option to defer RMDs until the date the surviving spouse is required to take his or her first RMD, is to roll over the employee's retirement account balance to the surviving spouse's own IRA. If the surviving spouse does not roll over the employee's retirement account balance to the surviving spouse's own IRA, distributions will continue to be made and the surviving spouse will not have an opportunity to defer RMDs until the date the surviving spouse attains the applicable age. This new provision, allowing the surviving spouse to make an election to be treated as the employee, is effective for calendar years beginning after December 31, 2023.

Limited Rollover of 529 Account to Roth IRA

Under the Secure Act, the beneficiary of a 529 college savings plan account is able to roll over distributions made to that beneficiary from a 529 account to a Roth IRA tax-free and without penalty, subject to the following limitations:

- The aggregate amount for all rollovers for each beneficiary cannot exceed \$35,000,
- The 529 account must have been open for at least 15 years,
- The annual rollover amount for each beneficiary is subject to the annual Roth IRA contribution limits (which for 2023 is \$6,500 if under age 50 and \$7,500 if 50 years of age or older) reduced by the aggregate contributions made during the taxable year to all IRAs maintained for the benefit of the beneficiary, and
- The rollover amount must not exceed the aggregate amount contributed to the 529 account (and earnings attributable to such contributions) before the five-year period ending on the date of the distribution from the 529 account.

Annual Roth IRA contribution limits are usually subject to income limitations, but under the Secure Act, these income limitations are waived for purposes of the 529 account rollover rules. This is effective for amounts distributed from a 529 account and rolled over to a Roth IRA account after December 31, 2023.

RMDs Under Roth Designated Account of Employer-Sponsored Retirement Plan

The original owner of a Roth IRA account is not required to take distributions under the RMD rules applicable to traditional (non-Roth) IRA accounts. However, prior to the Secure Act, the owner of a Roth-designated account in an employer-sponsored retirement plan was subject to the normal (non-Roth) RMD rules for distributions from that account owner's Roth-designated employer-sponsored retirement plans. Under the Secure Act, an owner of a Roth-designated account in an employer-sponsored retirement plan is no longer subject to the normal (non-Roth) RMD rules for distributions from that account. This is effective for tax years beginning after December 31, 2023, but not for RMDs that relate to years beginning before January 1, 2024 that are permitted to be paid after such date (e.g., if an employee attains the applicable age for RMDs before January 1, 2024, distributions are not required

to be made until April 1 of the following year).

IRA Qualified Charitable Distributions

An owner of a traditional IRA account who has reached age 70½, is permitted each year to direct that a distribution directly from that account of up to \$100,000 be made to public charities and private operating foundations (but not to private non-operating foundations or donor-advised funds). Under the Secure Act, the \$100,000 charitable contribution limit is indexed for inflation beginning in 2024.

The Secure Act also allows the account owner to make a one-time election to include a charitable remainder unitrust or a charitable remainder annuity trust, and for a charitable gift annuity as an eligible charity, and may direct that such distributions be made directly from his or her IRA. The distributions under this one-time election may not exceed \$50,000 in the aggregate, and an election may not be made if an election is in effect for a preceding taxable year. This one-time \$50,000 distribution is subject to certain limitations⁵ and is effective for tax years beginning after December 29, 2022.

Reduction in Excise Tax on Retirement Plan Accumulations

If the amount distributed to an individual from a retirement plan is less than the amount required to be distributed to that individual for the current year, an excise tax is imposed on the shortfall at a rate of 50% of the amount by which the amount required to be distributed exceeds the actual distribution made during that year⁶. Under the Secure Act, the 50% excise tax is reduced to 25%. In addition, if the failure to take the amount required to be distributed is corrected in a timely manner⁷, the 25% excise tax is further reduced to 10%. This is effective for tax years beginning after December 29, 2022, the date of enactment of the Secure Act.

Penalty-Free Emergency Withdrawals

Under current law, distributions before age 59½ are, with certain exceptions too long to enumerate in this article, subject to a 10% penalty tax. The Secure Act provides an additional exception to the 10% penalty tax for distributions made for emergency purposes to meet “unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses” (an “Emergency Distribution”). An Emergency Distribution may only be made once per calendar year and is limited to \$1,000 each year. The taxpayer has the option to pay back the Emergency Distribution over a three-year period beginning on the day after the date on which the Emergency Distribution was. If an Emergency Distribution is not paid back prior to the third anniversary of the Emergency Distribution, then no further Emergency Distributions are permitted until (a) the Emergency Distribution has been fully repaid during the three-year repayment period or (b) the aggregate of elective deferrals and employee contributions to the plan (in the case of an IRA, the total amounts contributed to the plan) subsequent to the Emergency Distribution is at least equal to the amount of the Emergency Distribution that has not been repaid. This is effective for Emergency Distributions after December 31, 2023.

Linked Emergency Savings Accounts

Under the Secure Act, employers may offer their non-highly compensated employees⁸ pension-linked emergency savings accounts. Contributions to the emergency savings account of an employee cannot exceed the lesser of (a) \$2,500 (or a lower amount set by the employer), or (b) 3% of that employee’s salary, and are treated like contributions to a Roth retirement account, except that employees may withdraw amounts from these accounts without penalty. Employers may automatically include all eligible employees in the emergency savings account program. When the employee leaves his or her job, the emergency savings account may be taken as cash or rolled into his or her Roth-designated retirement plan (if the employee has one) or a Roth IRA account. These accounts may be offered for years beginning after December 31, 2023.

If you have any questions about the SECURE 2.0 Act of 2022, please contact a member of Gould & Ratner’s [Estate Planning and Wealth Transfer Practice](#).

¹For an employee who is a 5% owner, the required beginning date is April 1 of the calendar year following the calendar year in which the account owner attains the required age, even if the account owner has not retired.

²The catch-up contribution limit is increased from \$6,500 in 2022 to \$7,500 in 2023 as a result of the annual inflation adjustment.

³Wages for this purpose include certain payments to partners of a partnership even though they are not generally treated as employees.

⁴The procedures for making the election are to be as prescribed by the IRS, and must include a timely notice to the plan administrator, and once made it cannot be revoked without the consent of the IRS.

⁵The limitations are beyond the scope of this article.

⁶In the case of an RMD not required to be distributed until April 1 of a calendar year, the excise tax will apply for the calendar year in which the RMD is required to be distributed (i.e., the calendar year containing the required beginning date), even though the RMD is applicable to the preceding calendar year.

⁷The procedure to correct the shortfall is beyond the scope of this article.

⁸A highly-compensated employee is generally either (a) an employee who received compensation from the employer maintaining the plan of more than \$135,000 for the preceding year (if the preceding year was 2022) or \$150,000 (if the preceding year was 2023) or (b) an employee who owned more than 5% of the employer maintaining the plan during the preceding year, regardless of compensation.