What to Know About SECURE Act 2.0

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On December 29th, 2022 President Biden signed into law the Consolidated Appropriations Act of 2023.This $1.7 trillion omnibus spending bill funds the U.S. federal government for the 2023 fiscal year. While the bill includes over 4,000 pages of legislative text, the focus of this article is on the section of the legislation known as SECURE Act 2.0. This legislation seeks to expand retirement plans and allow for additional flexibility and accessibility to help individuals save for retirement. While none of the provisions of SECURE Act 2.0 will have the impact that its predecessor the SECURE Act had with the elimination of the stretch IRA, SECURE Act 2.0 contains a number of changes that will likely have some impact on most savers. Below are the major provisions that are most likely to have the broadest impact. We've included some of our brief thoughts on each provision's planning impact as well as the effective dates of the changes.

REQUIRED MINIMUM DISTRIBUTION AGE INCREASED (AGAIN!)

The original SECURE Act increased the required minimum distribution (RMD) age from 70.5 to 72 starting in 2020. SECURE Act 2.0 again increases the RMD age to 73 starting in 2023 and increasing further to age 75 starting in 2033. Note, this means that IRA owners who turn 72 in 2023 and anticipated taking their first RMD in 2023 now have a one-year reprieve on RMDs until 2024! Below is a chart that shows the updated RMD ages by birth date after the passage of SECURE Act 2.0:

Account Owner's Date of Birth	RMD Age
Before July 1, 1949	70.5
July 1, 1949 - December 31, 1950	72
January 1, 1951 - December 31, 1959*	73
On or after Janury 1, 1960	75

**1959 date is subject to expected future technical correction*

Note, while the RMD age has been increased, the age at which qualified charitable contributions (QCDs) can be made remains 70.5.

GFC's TAKE: This change is beneficial in that it allows additional tax deferral of IRA distributions and allows more tax planning flexibility in the years leading up to the delayed RMD age. However, because RMDs are delayed but life expectancies stay the same, this means that once RMDs begin, they will begin at higher amounts, making planning prior to RMD age even more critical.

ROTH ACCOUNT ENHANCEMENTS

The SECURE Act 2.0 brought about a number of changes to Roth accounts. A few of those changes are listed below:

- Roth Employer Contributions – Prior to SECURE Act 2.0, any employer contributions to an employer retirement plan were required to be made on a pre-tax basis. For example, in the event that an employee was making contributions to an employer Roth 401(k), any employer matching or profit sharing contributions had to be made to the pre-tax 401(k). Now, employers have the option to make those contributions as after-tax contributions to employees' designated Roth accounts.

  EFFECTIVE DATE: Date of Enactment (Note, it will take employers some time to implement these changes should they choose to do so)

  GFC'S TAKE: While employer contributions to Roth accounts is a great feature allowing for tax-free growth and future tax-free distributions, these employer contributions would be included in the wages of the employee, giving the employee "phantom income" without the cash flow to pay the tax. As a result, the tax impacts of these Roth contributions should be considered.

- Roth Catch-Up Contributions – Employer-sponsored plan participants with wages from their current employer that exceed $145,000 in the prior year (inflation-adjusted) will be required to make any catch-up contributions to that plan as Roth contributions. Note, this provision appears to apply to wages only and not self-employed income. If an employer does not offer a Roth catch-up contribution option, then all plan participants would be disallowed from making catch-up contributions to the plan.

  EFFECTIVE DATE: 2024

  GFC'S TAKE: As this provision targets higher income taxpayers, altering previous tax-deferred catch-up contributions to after-tax contributions will have a more meaningful impact on tax liability of those affected. Additionally, if you are a higher income individual that anticipates making catch-up contributions and your employer currently does not offer a Roth option in their plan, talk to them about adding this feature so that you (and other employees!) have the option to participate in catch-up contributions.

- Roth SIMPLE and Roth SEP IRAs – SECURE Act 2.0 created the Roth option for both the SIMPLE IRA and SEP IRA. As with other Roth contributions, these contributions are made with after-tax dollars.

  EFFECTIVE DATE: 2023 (Note, it will take employers and custodians some time to implement these changes)
  GFC'S TAKE: SIMPLE IRA and SEP IRA participants inclined to get dollars into Roth IRAs already had the ability to make contributions to these plans and then make taxable conversions of those contributions to Roth IRAs. This update simply removes a step from the process by making direct Roth contributions via these plans.

- Elimination of Required Minimum Distributions (RMDs) from Roth Plan Accounts – Currently, Roth IRAs are not subject to RMDs for Roth IRA owners during their lifetimes, but employer plan Roth Accounts are subject to the regular RMD rules during the owner's lifetime (as noted in the RMD section above). Beginning in 2024, employer plan Roth Accounts will no longer be subject to the RMD rules during the owner's lifetime, bringing them in line with the Roth IRA RMD treatment. Note, distribution rules related to inherited Roth IRAs/Roth employer plans remains unchanged from those established under the original SECURE Act.

  EFFECTIVE DATE: 2024
  GFC'S TAKE: It is favorable that employer Roth Accounts will be aligned with Roth IRAs for purposes of no RMDs for the account owners.

- Transfers of 529 Plan Accounts to Roth IRAs – Under current law, distributions from 529 Education Plans that are not used for qualified education expenses are subject to ordinary income taxes and a 10% penalty on the earnings distributed out of the plan. This becomes problematic if a 529 plan is overfunded and distributions are desired. Unless you have other beneficiaries that can use the funds for qualified education expenses, there are limited ways to avoid this penalty once the 529 plan assets are no longer needed for education purposes. SECURE Act 2.0 provides a partial solution, with some meaningful limitations. 529 plan balances can be transferred to a Roth IRA in the beneficiary's name with the following stipulations:

529 Plan Transfer to Roth IRA Requirements
Roth IRA receiving the funds must be in the name of the 529 plan's beneficiary
Conversions from the 529 plan count towards and are limited by the beneficiary's annual Roth IRA contribution limit, and the beneficiary must have sufficient earned income to make this contribution
529 plan must have been maintained for at least 15 years
Contributions and associated earnings within the last 5 years to the 529 plan are not eligible for Roth conversion
There is a lifetime maximum allowable conversion of $35,000

EFFECTIVE DATE: 2024
GFC'S TAKE: Given the significant restrictions and the immateriality of the benefit, this isn't a meaningful planning opportunity to proactively take advantage of. However, if you have an overfunded 529 plan(s) that is no longer needed for education expenses, this could be a helpful way to avoid the penalty and associated income taxes related to unused 529 plan assets.

SPOUSAL IRA BENEFICIARIES

Under current law, surviving spouses inheriting retirement accounts from deceased spouses have a number of options on the treatment of the inherited IRA. SECURE Act 2.0 has added another option to that list – the ability for the sole beneficiary surviving spouse to elect to be treated as the deceased spouse. This allows RMDs to be calculated using life expectancy factors from the more favorable Uniform Life Table applicable to IRA owners and allows the surviving spouse to use the RMD age of the deceased spouse. In the event that the surviving spouse dies before RMDs begin, the surviving spouse's beneficiaries would also ultimately be treated as the original beneficiaries when inheriting the IRA upon the passing of the surviving spouse.

EFFECTIVE DATE: 2024
GFC'S TAKE: This election would be most beneficial when the surviving spouse inherits an IRA from a younger spouse and also potentially allows for more favorable treatment for the residual beneficiaries of the surviving spouse.

OTHER CATCH-UP CONTRIBUTION PROVISIONS

In addition to the Roth catch-up contribution provision noted above, the following changes were made to catch-up contributions:

- Traditional and Roth IRA Catch-up Contributions – The current catch-up contribution of $1,000 for taxpayers age 50 and over will be indexed to inflation and will be adjusted in increments of $100.

EFFECTIVE DATE: 2024

- Employer-Sponsored Plan Catch-up Contributions – Catch-up contributions for employer plan participants who are ages 60-63 will be increased to the greater of $10,000 or 150% of the regular catch-up contribution amount ($7,500 for 2023). The same will apply to SIMPLE IRA plans, with the catch-up contribution for those ages being the greater of $5,000 or 150% of the regular catch-up contribution amount. Note, these catch-up contributions will have the same mandatory Roth Account application for high income earners mentioned in the "Roth Catch-up Contributions" section above, so attention should be paid to the tax impacts of catch-up contributions for high income earners.

  EFFECTIVE DATE: 2025
  GFC'S TAKE: The ability to make additional contributions to plans if desired/warranted is always beneficial. With more frequent inflation adjustments and differing catch-up amounts based on age, more focus should be placed on monitoring changes in annual maximum contributions.

QUALIFIED CHARITABLE DISTRIBUTIONS (QCDs)

QCDs allow IRA owners to make distributions from their IRA directly to charity and exclude that distribution from income, beginning on the date the IRA owner turns 70.5. This amount is limited to a maximum of $100,000 per IRA owner per year. SECURE Act 2.0 makes the following modification to QCDs:

- $100,000 Maximum Annual QCD per IRA owner per year will be indexed for inflation.

  EFFECTIVE DATE: 2024
  GFC'S TAKE: Indexing for inflation will allow for expanded tax-efficient charitable giving opportunities moving forward.

- IRA owners will have a one-time opportunity to use a QCD to fund a split-interest entity (Charitable Remainder Unit Trust (CRUT), Charitable Remainder Annuity Trust (CRAT) or a Charitable Gift Annuity). This will be limited to a maximum one-time contribution of $50,000 per IRA owner (indexed for inflation). In the case of the CRUT or CRAT, the QCD contribution can be the only source of funding of that Trust and the only income beneficiaries of the trust can be the IRA owner and their spouse.

  EFFECTIVE DATE: 2023
  GFC'S TAKE: For CRUTs and CRATs, the cost of setup and administration of these trusts is highly likely to exceed the benefit of the inflation-adjusted one-time funding limit of $50,000 per IRA owner, making it an ineffective planning opportunity. Charitable Gift Annuities are less complex to set up and have limited associated costs, so that planning opportunity could be appealing to charitably-minded IRA owners, albeit with the $50,000 per IRA owner limitation.

RETROACTIVE FIRST-YEAR SOLO 401(k) ELECTIVE DEFERRALS

The original SECURE Act added the flexibility for individual business owners to establish Solo 401k plans AFTER the close of the tax year, as long as it was established on or before the due date of the business tax return deadline including extensions. This allowed for retroactive **employer deferrals** up to the due date of the return as well, but the **employee elective deferrals** must have been elected by the end of the plan year. As a result, if a Solo 401k plan was properly established for the prior tax year but AFTER the close of the plan year, the first-year employee elective deferral was impossible to make and was effectively disallowed under that rule. SECURE Act 2.0 fixes this treatment (mostly), as it allows for retroactive employee elective deferrals for Solo 401(k) plans up to the due date of the tax return (NOT including extensions).

EFFECTIVE DATE: 2023
GFC'S TAKE: This change brings the Solo 401(k) even closer in alignment with other retirement plans for self-employed individuals in regards to timing of plan setup and funding. The timing of funding for both employee and employer contributions should be monitored.

Miscellaneous provisions - There are a number of other provisions related to individuals and employers and their plans that are covered by SECURE Act 2.0. Below is a list of some of those provisions and their effective dates.

- **10% early withdrawal penalty exceptions** have been expanded to include age 50 exceptions for private-sector firefighters, state and local corrections officers, qualifying workers with 25 or more years of service for an employer; permanent reinstatement of qualified disaster distributions up to $22,000; Exceptions for Individuals with a terminal illness; Exceptions for individuals of domestic abuse up to the lesser of $10,000 (indexed for inflation) or 50% of their vested balance; Limited emergency withdrawal exception up to $1,000 per calendar year; Exception for qualified long-term care distributions (Various effective dates)
- Relief for Mistakes
    - Reduction of excise tax on undistributed RMDs from 50% to 25%, and from 25% to 10% if corrected timely (2023)
    - Earnings attributable to excess contributions to an IRA returned by due date of the tax return (plus extensions) exempt from 10% penalty (Date of Enactment)
    - Statute of limitations for missed RMDs limited to 3 years from the filing date of the return of the year the error made, excess contributions limited to 6 years (date of enactment)
    - Expansion of Employee Plans Compliance Resolution System to cover IRA issues (within 2 years of enactment)
    - Limitation of prohibited transaction treatment to the IRA in which it occurs (2023)
- Relaxation of 72(t) rules applying to distributions from IRAs and Qualified Plans (Various effective dates)
- Expanded auto-enrollment in certain employer retirement plans (2025)
- 401k eligibility service requirement further reduced for part-time workers (2025)
- Establishment of Starter 401k and 403b plans (2024)
- Modification of credit for small employer pension plan startup costs (2023)
- Military spouse credit for participation in defined contribution plan (2023)
- Establish Emergency Savings Accounts linked to retirement plans (2024)
- Saver's Match replaces the Saver's Credit (2027)
- Establishment of retirement savings lost-and-found database (2025)
- Exclusion of service-connected disability and retirement pension income related to Disabled First Responders (2027)

While the above items are not meant to be a comprehensive list of the changes under SECURE Act 2.0, we wanted to highlight the key provisions that have the most potential to impact our clients. For your reference, see the high-level timeline below summarizing the effective dates of the major provisions of the legislation. We will work proactively with each client to address any potential areas for change in their retirement and tax planning in light of the enactment of the SECURE Act 2.0 and related legislation.

Summary of SECURE ACT 2.0 Effective Dates of Key Provisions

Date of Enactment (DOE) and 2023

- Increase starting age for RMDs to 73
- Allow for Employer Roth Contributions (DOE)
- Allow after-tax employer matching contributions for participants in a Roth 401(k) plan
- Allows for creation of Roth SIMPLE and SEP plans
- One-time use of a QCD from an IRA to fund a CRUT, CRAT, or Charitable Gift Annuity
- Retroactive first-year Solo 401(k) elective deferrals (DOE)

2024

- Catch-up contributions of high income employer plan participants required to be made to Roth Accounts
- Elimination of RMDs from Roth Accounts in Employer Plans
- Allow certain transfers from 529 plans to Roth IRAs
- Allow for sole beneficiary Surviving Spouse to elect to be treated as the deceased spouse
- Traditional and Roth IRA catch-up contributions indexed to inflation
- $100,000 Maximum Annual QCD per IRA owner indexed for inflation

2025

- Catch-up contributions for employer-sponsored plan participants ages 60-63 increased to the greater of $10,000 or 150% of the regular catch-up limit
- Catch-up contributions for SIMPLE IRA participants ages 60-63 increased to the greater of $5,000 or 150% of the regular catch-up limit

2033

- Increase starting age for RMDs to 75

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