

SECURE Act 2.0 Passes the House: Which Retirement Plan Rules Would Change?

April 1, 2022

KEY TAKEAWAYS

- SECURE Act 2.0 passed the U.S. House of Representatives on March 29, 2022.
- SECURE Act 2.0 would make changes to employer-sponsored retirement plans to expand coverage and increase savings, as well as simplify and clarify plan rules.

On March 29, 2022, the U.S. House of Representatives passed H.R. 2954, a bill entitled "Securing a Strong Retirement Act of 2022," otherwise known as SECURE Act 2.0.

SECURE Act 2.0 would make various changes with respect to employer-sponsored retirement plans to expand coverage and increase retirement savings, including:

- Mandating automatic enrollment in most new 401(k) and 403(b) plans
- Increasing credit for small employer pension plan startup cost
- Enhancing the saver's tax credit
- Further increasing the required distribution age (gradually) to age 75
- Providing a higher catch-up limit at age 62-64
- Allowing a 403(b) plan to be established and maintained as a multiple-employer plan
- Permitting retirement plan matching contributions for student loan payments
- Codifying a safe harbor for corrections of automatic contribution failures
- Expanding and clarifying rules to improve coverage for long-term, part-time workers

The proposed legislation also includes provisions to simplify and clarify retirement plan rules, including:

- Providing new statutory rules to correct benefit overpayments, including limiting liability of the plan fiduciary for not recovering inadvertent benefit overpayment, and setting limitations on recoupment from participants and beneficiaries
- Reducing excise tax for failing to take required minimum distributions
- Establishing a retirement savings lost and found, which would allow individuals to search for information on their administrator and retirement plans in order to recover benefits
- Increasing the permissible dollar limit for involuntary distributions
- Expanding the Employee Plan Compliance Resolution System
- Eliminating the "first day of the month" requirement for governmental 457(b) plans

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- Separating the application of top-heavy rules to defined contribution plans covering excludible employees
- Limiting repayment period for qualified birth and adoption distributions to three years
- Permitting reliance on employee's certification in determining whether distribution may be made upon employee's hardship or an unforeseeable emergency
- Allowing penalty-free withdrawals in cases of domestic abuse
- Reforming family attribution rules
- Allowing amendments to increase benefit accruals under the plan for the previous plan year until employer tax return due date
- Permitting retroactive first year elective deferrals for sole proprietors
- Limiting cessation of IRA treatment to the portion of the account involved in a prohibited transaction

Finally, the bill includes several revenue provisions. Of particular interest:

- Permitting Roth contributions to Simplified Employee Pensions and SIMPLE IRAs
- Conforming the hardship distribution rules for 403(b) plans to those of 401(k) plans
- Requiring catch-up contributions permitted under 401(a), 403(b), or 457(b) plan to be designated as Roth contributions
- Allowing a 401(a) qualified plan, a 403(b) plan, or a 457(b) plan to permit an employee to designate matching contributions as designated Roth contribution. An employer matching contribution that is a designated Roth contribution would not be excludable from gross income.

While the bill will likely see some further tweaks as it goes through the legislative process, it enjoys broad bipartisan support and its prospects for passage are high. Longtime retirement policy champions Sen. Rob Portman (R-OH) and Rep. Kevin Brady (R-TX) are both planning to retire this year, and they have indicated that they intend to get this legislation across the finish line prior to their exit.

Miller Canfield continues to monitor H.R. 2954 as it moves through the next steps of the law-making process. We will provide updates, advice and resources to keep our clients abreast of any new developments.

As always, please contact the authors or your Miller Canfield attorney if you have any questions.