SECURE 2.0

What do you need to know?

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SECURE 2.0 – Agenda

- What is SECURE 2.0?
- Key Provisions of SECURE 2.0 that will impact plans in 2023, 2024 & 2025.
- Administrative Pitfalls of SECURE 2.0
- Opportunities for Plan Enhancements
- Due date for Amending the plan
- How can CRS help?

What is SECURE 2.0?

- The Setting Every Community Up for Retirement Enhancement (SECURE) 2.0 Act was signed into law at the end of 2022, bringing many current and future enhancements to qualified plans. The new provisions enable employers and the retirement plan industry to help employees save more for retirement.
- The Act affects defined contribution (DC) plans, defined benefit (DB) plans, and individual retirement accounts (IRAs).
- As with any new legislation, there are many questions that need to be answered, and guidance or relief will be needed for certain provisions.

Tax Credit for small Employer plan start-up and contribution costs. – Effective 2023 / Mandatory

- Three year start-up cost for employers with up to 50 employees is 100% of the cost with an annual limit of $5,000, (or if less, $250 times the number of non-highly compensated employees (NHCEs), with a minimum of $500).
- For employers with employees 51 to 100, the 100% of cost illustrated above is reduced to 50%.
- An additional credit for eligible employer contributions (except for Defined Benefit plans) is available for 5 years. The additional credit amount will be based on the percentages in the table below not to exceed $1,000 per employee. The credit is only applicable for employees with wages that DO NOT exceed $100,000 indexed for inflation.
- Table for the credit is indicated below:
  - First year = 100%
  - Second year = 100%
  - Third year = 75%
  - Fourth year = 50%
  - Fifth year = 25%
- Employers with 50 or fewer employees are eligible for the full credit, but the credit is phased out for employers between 51 and 100 employees

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Tax Credit for small Employer plan start-up and contribution costs - Examples

Start-Up Cost Tax Credit (assumes 15 NHCEs)				
	Year 1	Year 2	Year 3	Total
Start-Up Cost	$5,000.00	$3,500.00	$3,500.00	$12,000.00
A) 15 NHCEs x $250 (Not to exceed $5,000)	$3,750.00	$3,750.00	$3,750.00	
B) 100% of Start-Up Cost	$5,000.00	$3,500.00	$3,500.00	
Start-Up Tax Credit (Lesser of A or B)	$3,750.00	$3,500.00	$3,500.00	$10,750.00

Employer Contribution Tax Credit (assumes 13 Employees making <$100,000)						
	Year 1	Year 2	Year 3	Year 4	Year 5	Total
A) 13 x $1,000*	$13,000.00	$13,000.00	$13,000.00	$13,000.00	$13,000.00	$65,000.00
B) Percentage of Tax Credit	100%	100%	75%	50%	25%	
Employer Contribution Tax Credit (A times B)	$13,000.00	$13,000.00	$9,750.00	$6,500.00	$3,250.00	$45,500.00

*Lesser of actual employer contribution or $1,000

Required Minimum Distribution (RMD) Changes– Effective Date (Various) / Mandatory

- Effective 2023 the RMD age has increased from age 72 to age 73
- Effective 2023 the excise tax for failure to take your RMD in timely basis is lowered from 50% to 25%. It may be further reduced to 10%, if the correction is done within a predefined window.
  - A predefined window is defined as the date when the excise tax first applies (i.e., the last date on which the missed RMD was required to be made) and, for most taxpayers, will end on the last day of the second taxable year that begins after the end of the taxable year in which the RMD was required to be distributed. For example, for an RMD due by 12/31/2023, the correction window ends on 12/31/2025.
  - The Correction Period will end sooner, as follows: (i) immediately upon the date of mailing a notice of deficiency regarding the payment of the excise tax; or (ii) on the date the excise tax is assessed.
- Effective 2024 the RMD calculations will no longer include Roth balances in that calculation. This effectively lowers the RMD for participants that have Roth balances in a qualified plan.
- Effective 2033 the RMD age will increase to age 75.

Catch-up contributions must be made on Roth basis – Effective 2024 / Mandatory

- Catch-up Contributions must be made on a Roth basis for participants who had compensation that exceeded $145,000 in a prior calendar year (indexed for inflation).
- Any other participants must be permitted (but not required) to elect to have catch-up contributions made on a Roth basis.
- This means that plans that don't permit designated Roth contributions can't permit catch-up contributions.

Higher catch- up contribution limits- Effective 2025 / Mandatory

- Catch-up limits for 401k, 403b and governmental 457 plans will be increased to 150% of the regular catch limit for individuals who attain age 60 through 63.

Long-time part-time employees- Effective 2025 / Mandatory

- Both SECURE 1.0 and 2.0 addressed the need to have Long-time part-time employees become eligible for 401k plans.
- SECURE 1.0 – which is still in effect, requires all employees that worked at least 500 hours for three consecutive years, starting in 2022. Therefore, if a employee worked at least 500 hours in 2021,2022, 2023, they would enter the plan in 2024.
- SECURE 2.0- which reduces the three consecutive years to two consecutive years. This change is effective in 2023. Therefore, an employee worked at least 500 hours in 2023 & 2024, they would enter the plan in 2025.
- Vesting on any optional employer contributions will exclude service prior to 2021.

Mandatory automatic enrollment– Effective in 2025 / Mandatory

- SECURE 2.0 makes automatic enrollment a requirement for new 401k and 403b plans (exception less than 10 employees & companies in business less than 3 years), for plans established in 2023 or later, even though the automatic enrollment does not need to be implemented until 2025.
- Under the automatic enrollment the following provisions apply
  - Must automatically enroll to at least 3% (but not more than 10%)
  - Contribution increase each year by 1% to at least 10% (but not more than 15%)
  - Contribution must be invested in a qualified default investment alternative (QDIA)
  - Participant may opt-out at any time, and may take their contributions back if they opt-out within the first 90-days.

Exemption from Otherwise Excludable Employees from Top Heavy Contributions-Effective 2024 /Optional

- SECURE 2.0 allows all participant that are under age 21 or have less than one year of service to be excluded from any mandatory top heavy contributions.
- Below is an illustration of how SECURE 2.0 eliminates the need for a Top Heavy contribution for Employee #3 effective for the 2024 plan year. (Employee #3 had less than one year of service)

Name	Compensation	Date of Hire	Top Heavy Minimum Prior to SECURE 2.0	Top Heavy Minimum After to SECURE 2.0
Employee 1	$100,000.00	1/1/2019	$3,000.00	$3,000.00
Employee 2	$80,000.00	1/1/2020	$2,400.00	$2,400.00
Employee 3	$100,000.00	1/1/2024	$3,000.00	$0.00

Updating the dollar limit for mandatory distributions- Effective 2024 / Optional

- Current law the limit to force out terminated participants is a vested account balance of less than $5,000
- Under SECURE 2.0 that limit is raised to $7,000.

Withdrawal for Federally declared disasters– Effective for disasters occurring after January 26, 2021/ Optional

- Withdrawal for federally declared disasters
  - The act provides permanent disaster withdrawal rules for DC plans (includes 401k, 403b, profit sharing and governmental 457 plans) that opt to permit disaster withdrawals. The maximum withdrawal amount is $22,000 per disaster.
    - The taxable withdrawal amount is included in income over three years unless the participant elects otherwise
    - The withdrawal is exempt from the 10% early withdrawal penalty, and mandatory 20% federal tax withholding
    - Repayment is permitted within three years after the date of the withdrawal to a plan.
    - Loan terms can be modified to increase the maximum loan amount (up to $100K), permit the use of a participant's fully vested account, and suspend loan repayment for up to one year.

Hardship withdrawal self-certification- Effective 2023 / Optional

- 401(k) and 403(b) plans can rely on employee certifications that:
  - Their hardship withdrawal is being taken for one of the safe harbor hardship reasons.
  - The withdrawal requested doesn't exceed the amount needed to alleviate the hardship.
  - The participant has no other reasonably available resources to alleviate the hardship.

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Penalty free withdrawal for terminal illness – Effective 2023 /Optional

- This provision allows penalty-free withdrawals to certain terminally ill patients.
- The individual's physician must certify that the individual has a terminal illness or condition that can reasonably result in death within 84 months.
- The individual must otherwise be eligible for a distribution under the plan.
- The withdrawal may be repaid to the plan within three years.

Emergency savings account – Effective Date 2024 / Optional

- Allows plan sponsor to add "emergency savings account" to their retirement plan.
- An employee must meet the eligibility criteria established by the plan and not be a highly compensated employee.
- Plan sponsors can also opt to automatically enroll participants with a contribution rate no greater than 3%.
- The account can be no more than $2,500 (indexed annually). Once the cap is reached, additional contributions may be directed to the employee's Roth contribution account or stopped until the balance falls below the cap.
- It must be funded post-tax with Roth contributions and invested in cash, an interest-bearing deposit account, or in an investment product designed to preserve principal.
- Withdrawals must be allowed from the account at least once per month (and processed as soon as practicable), and at least the first four withdrawals from the account may not be assessed any fees for said transaction.
- Withdrawals are penalty free.
- On termination of employment, account balance can be converted to the Roth account within the plan or distributed to the participant.
- The deferrals to the account would be eligible for any matching contributions provided under the plan, with an annual matching cap set at the maximum account balance (i.e., $2,500 or a lower amount established by the plan).

Withdrawals for certain emergency expenses – Effective 2024 /Optional

- This provision permits withdrawals to pay for "unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses".
- Exempt from 10% early withdrawal penalty.
- The amount is limited to up to $1,000 per year (or, if the account is less than $2,000, the amount that exceeds $1,000).
- The emergency withdrawal can be repaid to the plan (or IRA) within three years.
- A participant isn't permitted to take another emergency withdrawal from the same plan or IRA in the three-year period unless the participant has repaid the emergency withdrawal or made contributions that equal or exceed the amount of the prior emergency withdrawal to the plan or IRA.
- These emergency expense withdrawals aren't permitted in DB plans.

Penalty-free withdrawals for domestic abuse victims – Effective 2024 /Optional

- Permits victims of domestic abuse to take a penalty-free withdrawal from a retirement plan (exclude DB and MPP) or IRA
- Maximum withdrawal cannot exceed the lesser of $10,000 (indexed for inflation) or 50% of the participant's vested account balance.
- Participant may self- certified the eligibility for the distribution
- Distribution exempt from the 10% early withdrawal penalty tax
- Distribution exempt form mandatory 20% withholding
- Distribution may be repaid back within three years.

Simplified requirements for unenrolled participants –Effective 2023 /Optional

- Under current law, various retirement plan notices and disclosures must be distributed to all eligible employees regardless of whether they made an election to participate in the retirement plan.
- This provision removes this requirement for unenrolled participants (i.e., those who are eligible but not enrolled), but only if such participants receive:
  - A Summary Plan Description (SPD) on initial eligibility
  - An annual reminder notice regarding the participant's eligibility, pertinent plan information, and any deadlines under the plan
  - Any other plan document to which the participant is otherwise entitled, on request

Treatment of student loans as elective deferrals for matching contributions – Effective 2024 / Optional

- Employers will be permitted to make matching contributions under 401(k), 403(b), or governmental 457(b) plans, with respect to qualified student loan payments.
- A qualified student loan payment is generally defined as any indebtedness incurred by the employee solely to pay qualified higher education expenses of the employee.
- The employer may rely on employee certification of qualified student loan repayments.
- For purposes of nondiscrimination testing, the provision permits a plan to separately test the employees who receive matching contributions on student loan repayments.

Administrative "Pitfalls"

- Tracking Long-Time Part-Time employees (starting in 2024)
  - Tracking part-time employees is now more important as they may become eligible for the plan. Part-time employees with more than 500 hours may become eligible for the plan, regardless of the plan's eligibility.
- Catch-up contributions must be Roth for certain employees (starting in 2024)
  - Now tracking of what type of catch-up contributions are being made are needed (pre-tax vs. Roth). Employees whose compensation in the prior year exceeds $145,000 (indexed for inflation) must have their catch-up made as Roth, rather than pre-tax.
- New automatic enrollment provision (starting in 2025)
  - For plans effective in 2023 or beyond, any plan that is open (other than those that are exempt), must have an automatic enrollment feature starting no later than 2025.
- Catch-up contributions limits raised for employees age 60-63 (starting in 2025)
  - Now tracking of employees ages 60-63 are needed as catch-up limits for those folks are 150% higher than other employees that are age 50 and older.

Opportunities for plan enhancements

- Shortening Eligibility for Plans- Since employees with less than one year of service are no longer required to receive a contribution in a top heavy plan.
- Increasing the automatic rollout limit from $5K to $7K
  - Allows plans to potentially reduce the amount of terminated participants
- Student Loan Provisions- Do you have a lot of employees saddle with student loan debt?
- Adding extra distribution options:
  - Emergency fund account
  - Emergency expenses
  - Domestic Abuse
  - Federally Declared Disasters

Due date for amending the plan

- The due date for amending the plan is no later than December 31, 2025
- However, operationally those provisions can be adopted by the effective date of the particular provision.
- In order to implement any particular provision a decision by the Employer should be made well in advance of actual implementation.

How can CRS help?

- We will inform our professional friends about the tax credits for new plans for both start-up cost and employee contributions.
- We will work with our clients to help them navigate the administrative complexity of the new law.
- Keep you update with any further IRS guidance.
- Work with our clients to see if any of the enhancement under the law will improve your plan.
- For those clients that would like us to handle the full administrative of the plan, we offer an enhanced service called 3(16) plan administration, whereby we do all of the following items: (just to name a few)
  - Submit payroll contributions
  - Track eligibility
  - Send out participant notices
  - Approve all loans and distributions (without the need of secondary approval)
  - Complete the annual census data for annual compliance and valuation testing.
  - If your plan is a large plan, work with the auditors to provide them the necessary information for their plan audit.
  - Sign the Form 5500