ENHANCING AMERICAN RETIREMENT NOW

The EARN Act

(aka SECURE 2.0)

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Bill Overview

- Individual Retirement
- Retirees
- Public Safety and Military
- Nonprofits and Educators
- Disaster Relief
- Employer Plans
- Notices, technical modifications, plan amendments, tax court proposals
- Revenue Provisions

Course Overview

This course will focus on the what the practitioner helping wealthy individuals needs to know.

- Changes for the retirement saver
- Changes for the retiree

This course will NOT cover changes from the employer's perspective.

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Changes to the: SAVER'S CREDIT

- Current Law

Table 1.–Credit Rates for Saver's Credit (for 2022)

Joint Filers (AGI)	Heads of Households (AGI)	All Other Filers[1] (AGI)	Credit Rate
$0 – $41,000	$0 – $30,750	$0 – $20,500	50 percent
$41,001 – $44,000	$30,751 – $33,000	$20,501 – $22,000	20 percent
$44,001 – $68,000	$33,001 – $51,000	$22,001 – $34,000	10 percent
more than $68,000	more than $51,000	more than $34,000	0 percent

Note: AGI amounts are indexed for inflation.
[1] Includes single, married filing separately, and qualifying widow or widower.

Table created by the joint tax committee.

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Changes to the: Saver's ~~CREDIT~~ Match

- SECURE 2.0
  - – Refund made as a direct contribution to a retirement account
  - – The credit would also be restructured:
    - Equal to 50% of up to $2,000 (not indexed) of contributions
    - Includes any elective/voluntary contributions; reduced by distributions over a 2-year testing period
    - The 50% rate would be phased-out to 0% over a MAGI range (indexed for inflation):

      MFJ: $41,000 - $71,000

      HoH: $30,750 - $53,250

      Single: $20,500 - $35,500
    - Taxpayer must have attained age 18 and not claimed as a dependent
  - – Effective starting in 2027

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Required Beginning Date (RBD) Increase

- Current Law
  - RMDs began at age 70½ before January 1, 2020 (i.e. before SECURE 1.0)
  - RMDs begin at age 72 current
- SECURE 2.0

Year	RBD
2022	72
2023 - 2032	73
2033	75

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Indexing IRA Catch-up Limit

- Current Law
  - Taxpayers over age 50 can contribute an additional $1,000 to their IRA annually
  - Applies to both Traditional & Roth IRAs
  - The $1,000 limit is not indexed for inflation
  - No income limitation
  - Each spouse may make the additional contribution
- SECURE 2.0
  - Index the catchup limit for inflation
  - Effective starting in 2024

Act § 108

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Higher Retirement Plan Catch-up Limits

- Current law
  - Taxpayers over age 50 can contribute an additional $6,500 to their 401(k), 403(b) and 457(b) plans annually
- SECURE 2.0
  - Change applies to those aged 60-63 (attained at least 60, but not 64 during the tax-year)
  - Increases the catch-up limit to $10,000 (basically; inflation adjustments apply)
  - Increases the catch-up limit for SIMPLE IRAs
  - **ALL CATCHUP CONTRIBUTIONS TREATED AS ROTH CONTRIBUTIONS**
  - Effective starting in 2025

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Higher Retirement Plan Catch-up Limits

401k Contribution Limit Example – 2025 Projection

Age	Elective Deferral Limit	Catch-up Limit	Total Elective Deferral
Under 50	$25,000	-	$25,000
50-59	$25,000	$8,000	$33,000
60-63	$25,000	$12,000	$37,000
Over 63	$25,000	$8,000	$33,000

WARNING – These figures are calculated using inflation estimates; mere rough numbers to illustrate the complicated difference by age.

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Matching for Student Loan Payments

- SECURE 2.0
  - Treat student loan payments as contributions in order to be eligible for an employer match
  - Treatment limited to the elective deferral limit, reduced by any actual elective deferrals
  - Available for 401(k) plans, 403(b) plans, 457(b) plans and SIMPLE IRAs
  - For testing purposes: student loans payments will not be treated as a contribution, however they will be considered an elective deferral
  - Employers will need to update plans
  - **Plan administrators can rely on the employee's certification**
  - Effective starting in 2024

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Emergency Expense Withdrawals

- SECURE 2.0
  - A new penalty-free distribution for personal or family emergency expenses
  - Limited to the lesser of: $1,000 or the non-forfeitable account balance in excess of $1,000
  - Limited to one distribution every 3-years unless the previous recent distribution is re-contributed
  - Available for: Qualified retirement plans, 403(b) plans, 457(b) plans, and IRAs
  - Plan administrators can rely on the employee's certification
  - Effective starting in 2024

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SIMPLE Plan Contribution Limits

- Current Law
  - Sponsored by small employers (100 or fewer employees)
  - Employer match required (3% of contributions or 2% of compensation)
  - The 2022 contribution limit is $14,000;
  - And the 2022 catchup limit beginning at age 50 is $3,000

- SECURE 2.0
  - Increases the catch-up limit by 10%
  - Requires certain employers to increase match
  - Effective starting in 2024

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SEP for Non-Trade or Business

- SECURE 2.0
  - Permits employers of domestic employees (e.g., nannies) to provide retirement benefits via a SEP
  - Effective starting in 2023

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ABLE Accounts

- Current Law
  - – Requires certain eligible individuals to be disabled before age 26
- SECURE 2.0
  - – Changes the age the disability must occur to before age 46
  - – Effective beginning in 2026

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529 to Roth Rollovers

- Current law
  - No mechanism to rollover unused 529 funds to retirement accounts

- SECURE 2.0:
  - Allows for rollovers 529 plan funds to Roth IRAs
  - 529 must be maintained for at least 15-years before the rollover
  - Roth rollovers limited to the aggregate contributions (and attributable earnings) made at least 5-years before the date of the distribution
  - Must be a direct, trustee-to-trustee transfer to a Roth IRA account maintained for the benefit of the 529 plan beneficiary
  - Rollover limited to the $6,000 contribution limit (adjusted for inflation)
    - Regular IRA contributions reduce eligible 529 rollovers
    - Roth income limits don't seem to apply
    - Overall aggregate lifetime limit of $35,000
  - Earnings and contributions from the 529 plan carryover for the Roth ordering rules
  - Effective starting in 2024

Act § 126

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Remove RMD Barriers for Life Annuities

- Current law
  - Limitations of annuities in plans

- SECURE 2.0:
  - Allows for certain increasing annuity payments and lump-sum payments
  - Effective starting 2023

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Qualifying Longevity Annuity Contracts

- Current law
  - QLAC is fixed annuity that allows RMD deferral
  - In 2022, a QLAC is limited to the lesser of 25% of their retirement funds or $145,000

- SECURE 2.0:
  - Eliminate the 25% limitation
  - Increase dollar limitation to $200,000 in 2023 (will inflation adjusted thereafter)
  - Other technical changes

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Failed RMD Penalty

- Current Law
  - 50% excise tax (basically a penalty) on failed RMDs
  - Excise is in addition to income tax assessed on the distribution

- SECURE 2.0:
  - Reduces the excise tax to 25%
  - 10% in the case of timely corrections – the “correction window”
    - ➢ Before the mailing date of a notice of deficiency
    - ➢ Before the date the 25% excise tax is assessed
    - ➢ Before the end of the third calendar year of when the tax was imposed
  - Effective starting in 2023

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Retirement Plan Lost & Found

- The proposal would require Treasury to create an online searchable database

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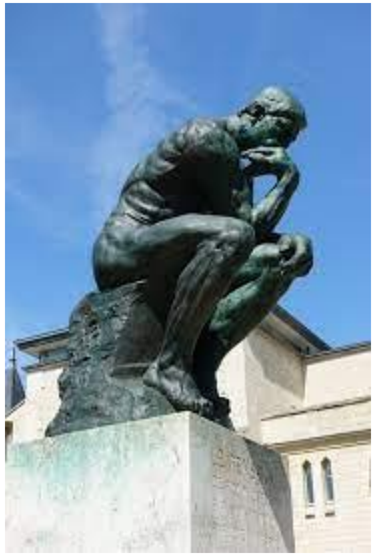
Expansion of Employee Plans Compliance Resolution System

- Current Law
  - Employee Plans Compliance Resolution System (EPCRS) – allows for self-correction of inadvertent errors

- SECURE 2.0
  - Expands the system to IRA custodians



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One-Time CRT Contribution

- SECURE 2.0
  - One time election to fund a CRT (or charitable gift annuity) with an IRA distribution
  - Limited to $50,000 (adjusted for inflation)
  - Income interest must be payable to account owner or spouse
  - The IRA distribution qualifies as a QCD to a CRT to the extent the contribution would qualify as deductible under Section 170 (i.e. to the extent the remainder interest exceeds the present interest)
  - Effective starting in 2023

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Repayment of Qualified Birth or Adoption Distributions

- Current Law
  - Qualified birth and adoption distributions are exempt from the 10% penalty
  - Repayments of these distributions are allowed

- SECURE 2.0
  - Limits repayments to a 3-year window (provides clarity)

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Self-Certified Hardship Distributions

- SECURE 2.0
  - Allow employers to rely on employee certification that hardship distribution conditions are met

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IRA Excise Tax Statute of Limitations

- Current Law
  - There is not statute of limitations (SOL) for excise tax on excess contributions and accumulations
- SECURE 2.0
  - 3-year period if the taxpayer is not required to file a return
  - 6-year period if the taxpayer filed an income tax return
  - No SOL for certain acquisitions

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Penalty-Free Withdraws for Domestic Abuse

- SECURE 2.0
  - Adds an exception to the 10% early withdraw penalty for domestic abuse victims
  - Exception applies to a 1-year period after the abuse
  - Exception limited to the lessor of:
    - $10,000   OR
    - 50% of the account value
  - Allow domestic abuse victim distributions to be recontributed within three years after the day it was it was received
  - Self-certification procedures
  - Effective 2024

Act § 314

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IRA Prohibited Transactions

- Current Law
  - – PT disqualifies entire IRA
  - – IRA immediately fully taxable as if distributed
- SECURE 2.0
  - – Allows IRAs to be considered separately
  - – Effective 2023

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SEPP Clarifications

- Current Law
  - A Series of Substantially Equal Periodic Payments (SEPPs) is an exception to the 10% early withdrawal penalty for pre-59½ distributions
  - Payments must be computed according to one of three permissible methods
  - However, under current law, if the series of payments is modified or terminated within 5-years of starting or before age 59½ the entire series of payments is subject to the 10% penalty; modifications include
    - Change in the payment amount (generally)
    - Additional funds contributed or rolled over to the account
    - Rollover of the account to another plan

- SECURE 2.0
  - Allows rollovers to occur and not be considered a modification to the SEPP, provided the payments continue as required as if the rollover didn't occur
  - Includes relief for certain SEPP annuities and provides relief for certain reporting requirements

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Elimination of Addition Tax on Corrective Distributions of Excess Contributions

- Current Law
  - The 10% early distribution penalty can apply if a corrective distribution is made to remove an excess contribution
- SECURE 2.0
  - Exempts corrective distributions of excess contributions from the 10% penalty
  - To be eligible for the exemption:
    - ➢ The corrective distribution (with any income earned thereon) must be distributed by the return due date (including extensions)
    - ➢ The taxpayer did not claim a deduction for the excess contribution
  - Effective 2024

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Treasury Guidance on Rollovers

- Current Law
  - "Bungled" rollovers are common and difficult to correct

- SECURE 2.0
  - Requires the Secretary to develop and release sample forms no later than 1/1/2025
  - Forms would be for:
    - ➢ Direct rollovers from employer plans to another employer plan or IRA
    - ➢ Trustee to trustee transfers from an IRA to another IRA or retirement plan

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Roth Plan Distributions

- Current law
  - RMDs apply to qualified Roth contribution programs (e.g. Roth 401k elective deferrals)
  - However, retirees can avoid RMDs by rolling over plan assets into Roth IRAs

- SECURE 2.0:
  - Removes RMDs for qualified Roth contribution programs – during life
  - Equalizes treatment to Roth IRAs
  - Effective 2024

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Terminal Illness Exception

- SECURE 2.0
  - Creates a new exception to the 10-percent early withdrawal penalty tax for terminal illness
  - Terminally ill individual means an individual who has been certified by a physician as having an illness or physical condition that can reasonably be expected to result in death in 84 months or less after the date of the certification
  - Effective to distributions made after enactment

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Surviving Spouse Election to be Treated As Employee

- SECURE 2.0
  - Permits a Surviving Spouse of an employee who dies before RMDs begin to elect to be treated as the employee to determine when distributions begin.
  - Also permits the spouse to apply the present-law rule that treats the spouse as the employee for purposes of determining the distribution period in cases where the spouse dies before distributions begin.
  - Effective starting in 2024

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Long-term Care Contracts

- SECURE 2.0
  - Repeals government plan direct pay requirement for long-term care insurance
  - Payments to the insured, who in turn pays the premium permitted
  - Reporting merely requires an attestation that the reduced taxable amount is correct
  - Applies to distributions made after enactment

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Early Withdrawal Penalty Exemption Age

- Current law
  - Qualified public safety employees can avoid the early withdraw penalty at age 50
  - IRC § 72(t)(10)

- SECURE 2.0
  - Statutory change: "*Age 50 or 25 years of service under the plan, whichever is earlier*"
  - Adds certain corrections employees to the exemption
  - Effective to distributions made after enactment

Act § 329 - 330

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Federally Declared Disasters

- Current law
  - On an event-by-event basis, Congress has allowed those suffering from a disaster to access their retirement funds without penalty

- SECURE 2.0
  - Adds IRC § 72(t)(11)
  - Allows for penalty-free distributions within 180-days of a Presidentially declared disaster
  - To those who principal place of abode is located in the disaster area (as declared)
  - And who sustained an economic loss by reason of the disaster
  - Penalty-free distributions in all taxable years limited to $22,000
  - Distribution income recognized ratably over a 3-taxable year period; election out available
  - 3-year repayment period beginning the day after the distribution
  - Allows for $100,000 plan loans (compared to the $50,000 general limit)

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Elimination of Additional Tax on Corrective Distributions of Excess Contributions

- Current law
  - The 10% early distribution penalty can apply to corrective distributions
- SECURE 2.0
  - Adds IRC § 72(t)(2)(ix) to the list of distributions to which the early distribution penalty doesn't apply to
  - New statutory language: [the 10% penalty shall not apply to distributions:] "attributable to withdrawal of net income attributable to a contribution which is distributed pursuant to section 408(d)(4).''
  - 408(d)(4) applies to contributions returned before the return due date
  - **New law applies to any determination of tax after enactment**

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Long-term Care Contracts

- SECURE 2.0:
  - Permits a defined contribution plan to allow for distributions to purchase qualified long-term care insurance
  - Limit: premium paid, 10% of the accrued benefit, or $2,500 (inflation adjusted)
  - These distributions would be includable in income, but exempt from the 10-percent penalty

Act § 334

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“Inherited” IRAs Payable to Special Needs Trusts

- Current Law:
  - SECURE 1.0 required “inherited” IRAs to be distributed within 10-year, however it exempted disabled beneficiaries and instead allows them to be life expectancy-based distributions
  - However, the proposed regulations implementing this failed to find a solution for IRAs payable to Special Needs Trusts (SNT) to make life-expectancy based distributions

- SECURE 2.0:
  - Fixes this problem by allowing a SNT to have a charitable beneficiary and remain a qualified designated beneficiary (a charity usually causes the trust to fail because the actual persons who could potentially receive the retirement funds can’t be identified)
  - The problem may remain for some trusts that can make distributions to other family members before the death of the disabled beneficiary
  - Effective starting in 2023

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SIMPLE & SEP Roth IRAs

- Current Law
  - No Roth contributions to Simple and & SEP IRAs

- SECURE 2.0
  - Allows SIMPLE and SEP Roth contributions
  - *Revenue raising provision of the act*
  - Effective beginning in 2023

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Catch-up Elective Deferrals Limited to Regular Contribution Limit

- Current Law
  - Catch-up contributions available to those age 50 and over are generally pre-tax
  - But can be designated as Roth (after-tax) contributions

- SECURE 2.0
  - No deductible catch-up contributions from employees with wages from the employer exceeding $145,000
    - Prior year wage figure applies
    - Indexed for inflation
  - Limited employees can still make designated Roth contributions, if the plan allows for it
  - *Revenue raising provision of the act*
  - Effective beginning in 2024

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Roth Employer Match

- Current Law
  - Employer matches are all pre-tax
- SECURE 2.0
  - Allows employer match to be Roth (optionally)
  - *Revenue raising provision of the act*
  - Available for contributions made after enactment

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Charitable Easements

- Current Law
  - Allows for tax-planning that is arguably abusive or simply is abusive

- SECURE 2.0
  - Adds a limitation in IRC § 170(h)(7)
  - Contribution cannot exceed 2.5 times the sum of each partner's basis in the partnership
  - Complicated exceptions and basis calculations
    - Exceptions for family partnerships
    - Exceptions to preserve historic structures
  - Expanded statute of limitations
  - Additional reporting requirements
  - Safe-harbor to correct deed errors
  - Applies to contributions made after the effective date

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Conclusion

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