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SECURE ACT 2.0 AND PROPOSED CHANGES

On May 4, 2021, the House Representatives reintroduced the "Securing a Strong Retirement Act of 2021," commonly referred to as the SECURE Act 2.0. The original SECURE Act was signed into law by President Trump in late 2019, and was designed to make saving for retirement easier and more accessible. The new Act builds on the original and continues to expand coverage and increase retirement savings opportunities for individuals and businesses.

The following is a summary of the important provisions in the original SECURE Act and the possible changes included in the proposed legislation. **Keep in mind that these are currently just proposals. Although there is bipartisan support, it is likely that the provisions will be modified as the bill makes its way through Congress.**

Age Increase for Required Minimum Distributions (RMDs)

- The Secure Act raised the age to start taking RMDs from traditional IRAs and 401(k)s from 70½ to 72 and was effective for distributions made after December 31, 2019.

- **Secure Act 2.0 Proposal –** raises the age to start taking RMDs to 75 in phases over several years:

    - From 72 to 73 for distributions to be made after December 31, 2021;

    - From 73 to 74 for distributions to be made after December 31, 2028;

    - From 74 to 75 for distributions to be made after December 31, 2031.

- **Secure Act 2.0 Proposal** – penalties for failing to make RMDs would be reduced from 50% to 25%, and further reduced to 10% if the mistake is corrected in a timely manner.

No Age Restriction on Traditional IRA Contributions

- The original Secure Act repealed the maximum age restriction for making traditional IRA contributions, as long as you are still working and effective for contributions made for taxable years beginning after December 31, 2019.

Increase for Catch-Up Contributions

- Under current law, workers age 50 and older can make catch-up contributions of $6,500 per year for 401(k) and 403(b) plans, $3,000 for SIMPLE plans, and $1,000 for IRA's.

- **Secure Act 2.0 Proposal** – allows workers between the ages of 62 and 64 to make catch- up contributions of $10,000 per year for 401(k) and 403(b) plans and $5,000 for SIMPLE plans and effective for contributions made for taxable years beginning after December 31, 2022. These amounts will be indexed for inflation.

  - There is no change for IRA catch-up limits under the proposal, though they would be indexed to inflation beginning in 2023 under the proposal.

  - A Section 401(k) qualified plan, a 403(b) plan or a 457(b) plan may permit an employee to designate matching contributions as designated Roth contributions. An employer matching contribution that is a designated Roth contribution shall not be excludable from gross income.

Other Updates to Roth Account Contributions

- **Secure Act 2.0 Proposal** – allows contributions to SIMPLE and SEP IRA's to be made as after-tax Roth contributions and effective for contributions made for taxable years beginning after December 31, 2021, and employers may allow employees to elect matching contributions in a Roth account.

- **Secure Act 2.0 Proposal** – Under current law, catch-up contributions to a qualified retirement plan can be made on a pre-tax or Roth basis (if permitted by the plan sponsor). Effective January 1, 2022, all catch-up contributions to qualified retirement plans would be subject to Roth tax treatment.

Distributions from Inherited IRAs

- IRAs inherited from original owners who have passed away on or after January 1, 2020 must be distributed to beneficiaries within 10 years following the death of the account holder.
    - Does not apply to surviving spouses, minor children, beneficiaries who are less than 10 years younger than the original account holder and disabled or chronically ill beneficiaries.

Penalty-Free Withdrawals

- Provided penalty-free withdrawals of up to $5,000 (per parent) from a defined contribution plan or IRA within one year from date of birth or adoption and effective for distributions made after December 31, 2019:
    - Adoptee must be younger than 18 or is physically or mentally incapable of self-support.
    - Does not apply to adoption of spouse's child.
- **Secure Act 2.0 Proposal** – allows domestic abuse survivors to withdraw the lesser of $10,000 or 50% of their 401(k) account, without being subject to the 10% early withdrawal penalty and effective for distributions made after the enactment of the Act.

Use of Excess Funds in College Savings Plans

- Excess funds remaining in college savings plans, also knows as 529 accounts, can be used to pay down student loan debt up to $10,000 over the course of the student's lifetime and effective for distributions made after December 31, 2018.

Employer Retirement Savings Plan Changes and Auto-Enrollment

- Part-time employees who are 21 years old and have worked at least 500 hours per year for at least 3 consecutive years are eligible for employer 401(k) plan enrollment and effective for plan years beginning after December 31, 2020:
    - Does not apply to collectively bargained employees.
- **Secure Act 2.0 Proposal** – reduces the period of service requirement for part-time employee plan eligibility from 3 consecutive years to 2 and effective for plan years beginning after December 31, 2020.
- **Secure Act 2.0 Proposal** – requires employers to automatically enroll eligible employees into 401(k) or 403(b) plans at a contribution rate of 3% of salary unless employees opt out or change the rate and effective for plan years beginning after December 31, 2022:
    - Enrolled employee contribution rates automatically escalate each year by 1% until it reaches a minimum of 10%.
    - Does not apply to businesses with fewer than 10 employees, businesses in existences for less than 3 years, SIMPLE plans, and retirement plans for churches and government agencies.

Employer Matching Contributions Based on Employee Student Loan Payments

- **Secure Act 2.0 Proposal** – allows employers to contribute to an employee's retirement plan account by matching a portion of their qualified student loan payments, effective for contributions made for plan years beginning after December 31, 2021:
    - Must be applied in the same manner and rate as matching contributions on account of elective deferrals.
    - Can apply to 401(k) or 403(b) plans, SIMPLE IRAs, and 457(b) plans.

Small Business Tax Credits and Multi-Employer Plans

- Increased the tax credit available for a small business's (up to 100 employees) pension plan startup costs to 50% and up to a maximum credit of $5,000 per employer for the first 3 years and effective for tax years beginning after December 31, 2019.

- **Secure Act 2.0 Proposal** – increases the tax credit from 50% to 100% of plan start-up costs for small businesses with 50 or fewer employees up to a maximum of $5,000 per employer for the first 3 years the plan is in existence or upon joining an existing plan and effective for tax years beginning after December 31, 2021.

- Created a new extra $500 tax credit for a small business's new or converted 401(k) plans and SIMPLE IRA plans that include automatic enrollment for the first 3 years and effective for tax years beginning after December 31, 2019.

- Unrelated small businesses can join together in multiple-employer plans to provide retirement plans for employees and leverage economies of scale and lower administrative costs and effective for plan years beginning after December 31, 2020.

- **Secure Act 2.0 Proposal** – offers a new tax credit for small businesses with up to 50 employees that would offset a percentage of direct employer contributions up to $1,000 per employee in the first year enrolled in a defined contribution plan and effective for tax years beginning after December 31, 2021:

    - For employers with 51-100 employees the credit is phased out over 5 years.

- **Secure Act 2.0 Proposal** – allows employers to offer small immediate incentives, such as small gift cards, to encourage joining and contributing to employer-sponsored retirement plans and effective for plan years beginning after the enactment of the Act.

If you have any questions on the original SECURE Act or the proposed changes and how it may impact you or your business, please do not hesitate to reach out to us for assistance. As this proposal moves through Congress, we will continue to advise you of any relevant updates and proposals.

Your friends at,

Fishman Block + Diamond