



Q4 2022 Retirement Legislation Update

What are the odds that SECURE Act 2.0 will become law by the end of 2022? All things considered—good, that is, there is a better than 50 percent chance that the president will enact some form of retirement savings enhancement legislation by year end. Hopes for passage are high because both Democrats and Republicans support retirement plan reform, they want to close out the year with a “win” and, if a final bill fails, they would have to start from scratch next year with a new Congress (the 118th).



But a great deal must happen before enactment is possible and time is running short. Plus, Congress has numerous other priorities (e.g., the budget, midterm elections, inflation, international affairs, etc.) clamoring for its attention.

Regarding retirement reform measures, first, the House and Senate must reconcile their differences between three foundational bills that are under consideration as SECURE 2.0:

1. HR 2954 Securing a Strong Retirement (SSR) Act
2. S 4353 Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg (RISE & SHINE) Act and
3. S 4808 Enhancing American Retirement Now (EARN) Act.



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Second, the House and Senate must pass one version of a final bill and send it to the president as either standalone legislation or attached to a larger measure (e.g., a year-end spending bill) for his consideration. Finally, the president must sign off on the measure before it can take effect.



While not identical, the three bills share the broad, common goals of

- Expanding access to workplace retirement plans,
- Increasing savings,
- Broadening lifetime income options and
- Simplifying plan administration.



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With nearly 150 provisions between the three bills (although with a great deal of overlap) Congress is feeding a lot of ideas into the legislative “thrashing machine” to separate the wheat from the chaff. When the dust settles, the resulting bill is most likely to

- Enhance automatic enrollment and auto escalation features in 401(k) plans
- Modify Plan Start Up Credits for small employers
- Promote and enhance the Saver’s Credit for individuals
- Delay RMDs past age 72
- Allow employer matching contributions based on student loan payments
- Increase catch-up contribution limits
- Raise the plan cash-out limit
- Permit plan repayments of withdrawals related to birth or adoption, or domestic abuse expenses
- Enhance plan coverage of part-time employees
- Create emergency savings accounts within defined contribution plans
- Sanction Multiple Employer/Pooled Employer Plans (MEPs/PEPs) for 403(b)s
- Modify PEP rules regarding contribution collection
- Allow for participant health benefits in overfunded pension plans
- Add special ESOP tax provisions for S-corporation owners
- Permit retroactive plan amendments to increase plan benefits
- Forego certain plan disclosures for nonparticipants
- Include comparative benchmarking procedures for blended funds such as target date





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- Clarify employee self-certification of hardship withdrawals
- Create a "Retirement Savings Lost and Found"
- Permit de minimis financial incentives to encourage 401(k) plan participation
- Issue pension risk transfer guidance for purchasing annuities
- Allow 403(b) plans to invest in collective investment trusts
- Clarify life annuities and qualifying longevity annuity contracts for plan withdrawals
- Broaden the IRS's plan correction programs
- Create a military spouse retirement plan eligibility credit for small employers
- Allow small immediate financial incentives for contributing to a plan
- Create a safe harbor for correction of employee elective deferral failures
- Allow participants of governmental 457(b) plans to change their deferral rate at any time before the compensation is available to the individual
- Allow individuals to make a one-time election of up to \$50,000 (indexed for inflation) for qualifying charitable distributions to certain split-interest entities
- Extend the age 50 early withdrawal exception for qualified public safety employees to private sector firefighters
- Exclude from income certain disability-related first responder retirement payments
- Allow a top-heavy plan that covers otherwise excludable employees to disregard this group from the top-heavy minimum contribution testing in certain cases
- Reform family attribution rules
- Permit retroactive first year elective deferrals for sole proprietors
- Allow SEP and a SIMPLE IRAs to be designated as Roth IRAs
- Conform the 403(b) hardship distribution rules to those for 401(k) plans
- Require plan catch-up contributions to be made as designated Roth contributions
- Permit employees to designate matching contributions as designated Roth contributions





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The final bill needs to be revenue neutral to have a chance of enactment. Most of the provisions would increase expenditures. Those that would be offsetting—or have the “pay-as-you go” effect—are the Roth provisions (i.e., requiring catch-up contributions to be designated Roth contributions, allowing employees to designate their employers’ matching contributions as designated Roth contributions and SEPs and SIMPLE Roth IRAs).

SECURE Act 2.0 enactment is not impossible this year. [Recall that the president signed SECURE Act 1.0 at the eleventh hour of 2019 (December 20, 2019)]. Congressional action will heat up after the mid-term elections (November 8, 2022). It’s time to place your bets.





ANNUAL RETIREMENT PLAN CONTRIBUTION LIMITS FOR 2023

Plan Limits	2023	2022
401(k) Elective Deferral Limit	\$22,500	\$20,500
Catch-Up Contribution Limit	\$7,500	\$6,500
Annual Defined Contribution Limit	\$66,000	\$61,000
Annual Compensation Limit	\$330,000	\$305,000
Annual Defined Benefit Limit	\$265,000	\$245,000
Highly Compensated Employee Dollar Limit	\$150,000	\$135,000
Key Employee Dollar Limit	\$215,000	\$200,000
Related Limits		
403(b)/457 Elective Deferral Limit	\$22,500	\$20,500
SIMPLE Employee Deferral Limit	\$15,500	\$14,000
SIMPLE Catch-Up Deferral Limit	\$3,500	\$3,000
SEP Minimum Compensation Limit	\$750	\$650
SEP Annual Compensation Limit	\$330,000	\$305,000
Social Security Taxable Wage Base	\$160,200	\$147,000
Self-only HSA Contribution Limit	\$3,850	\$3,650
Family HSA Contribution Limit	\$7,750	\$7,300
HSA Catch-Up Contribution Limit	\$1,000	\$1,000
IRA Contribution Limit	\$6,500	\$6,000
IRA Catch-Up Contribution Limit	\$1,000	\$1,000



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Highest Social Security COLA in 40+ Years

The Social Security Administration (SSA) on October 13, 2022, announced an 8.7 percent cost-of-living adjustment (COLA) to benefit payments in 2023. The SSA provides benefits to approximately 70 million Americans. Consequently, the maximum SSA benefit in 2023 for a worker retiring at full retirement age will rise from \$3,345 per month to \$3,627 per month. This will be the largest benefit amount increase since 1981, when the COLA rose by 11.2 percent. SSA benefits are the second largest source of retirement income for most American workers, next to income from retirement plans.

The 2023 SSA COLA also affects the taxable wage base, which will increase to \$160,200, up from \$147,000 for 2022. The SSA COLA also impacts IRA and retirement plan contribution levels and thresholds. The IRS is expected to release the new numbers in the next few weeks.





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IRS to Release Final RMD Rules/Grants Relief for Certain Beneficiary Distributions for 2021 and 2022

In Notice 2022-53, the IRS provided two key bits of information related to its required minimum distribution (RMD) regulations and beneficiary distributions thereunder. First, the IRS announced it intends to issue final RMD regulations soon that will apply no earlier than the 2023 distribution calendar year. Second, the notice provides relief for beneficiaries who failed to take “specified RMDs” for 2021 and 2022 under the currently proposed RMD regulations.



A specified RMD, in this case, is essentially an annual distribution due to a noneligible designated beneficiary under the 10-year rule owing because of the plan participant or IRA owner’s death after beginning mandatory distributions (i.e., after age 72). It also includes a beneficiary of an eligible designated beneficiary who died in 2020 or 2021 and was taking lifetime payments, who did not take a 2021 and/or 2022 RMD. The guidance clarified there is no qualification issue for qualified plans that failed to make the specified payments, nor would a 50 percent penalty apply to the would-be recipient for failure to take the distributions. An eligible designated beneficiary (EDB) is a spouse, disabled or chronically ill individual, individuals who are not more than 10 years younger than the employee (or IRA owner), or children of the employee (or IRA owner) who have not reached the age of majority. A noneligible designated beneficiary is a nonspouse beneficiary who does not qualify as an eligible designated beneficiary as listed previously.



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IRS Delays Qualified Plan Amendments

With the release of two notices (IRS Notices 2022-33 and 2022-45) plan sponsors and IRA administrators have more time (until December 31, 2025) to amend their plan documents for a series of laws that took effect over the last few years.

First, IRS Notice 2022-33 extends the deadline for amending qualified retirement plans and IRAs to December 31, 2025, (later for governmental plans) to incorporate provisions of the

- Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act),
- Bipartisan American Miners Act of 2019 (BAMA) and
- Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Initially, the IRS had required qualified plans be amended for these laws by the end of the 2022 plan year (or 2024 plan year for governmental plans).





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Similarly, IRS Notice 2022-45 extends the deadline for amending qualified retirement plans and IRAs to December 31, 2025, (later for governmental plans) to comply with certain other provisions of the CARES Act, as well as the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act).

Specifically, Notice 2022-45 extends the deadline for incorporating into the plan

- Coronavirus-related distributions,
- Increased retirement plan loan sizes,
- Suspended retirement plan loan payments and
- Qualified disaster distributions.

As a result of the two notices, most plan sponsors will be able to adopt a single amendment to comply with the SECURE Act, BAMA, the CARES Act and the Relief Act.

At this point, it appears tax-exempt 457(b) plans are not granted amendment relief and remain subject to an end-of-the-2022 plan-year amendment deadline.

