SECURE 2.0 Act of 2022

Webcast Q&A

On January 25, 2023, ADP Retirement Services held a webcast on the SECURE 2.0 Act. There wasn't enough time to answer all the questions submitted during the webcast. We created this Q&A to provide answers to the remaining attendee questions.

We hope you find this information helpful.

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Tax Credit

Optional Provision

Q. Does the Start-up Tax Credit apply to Non-profit organizations?

A. No, the start up tax credit is a non-refundable credit against taxes owed by the Employer, so a Non-profit organization would not benefit from the tax credits.

Q. Does the Start-up Tax Credit apply to MEP's?

A. The start-up tax credit is available to employers for the first three years that they join an existing MEP, regardless of how long the MEP has been in existence.

Q. Are the credits for employer match only for new start-up employer sponsored plans or does it apply to existing plans as well?

A. The additional employer contribution credit applies to businesses with up to 100 employees who establish a new defined contribution plan. The credit will cover not only employer matching contributions, but also any employer non-elective contribution as well.

Q. We just transferred from a SIMPLE IRA to a Safe Harbor 401(k) at the beginning of 2023 and have less than 50 employees. Would we qualify for the start-up tax credits?

A. The 401(k) plan would not count as a new plan for purposes of the start up tax credits since it covers the same employees as the SIMPLE IRA plan. However, if the SIMPLE IRA plan was established within the last three years, it may still qualify for the start up tax credit.

Automatic Enrollment

Required Provision

Q. Does the automatic enrollment requirement apply to only new plans, or does it apply to existing plans as well?

A. The SECURE 2.0 Act automatic enrollment provision applies only to new 401(k) or 403(b) plans established after December 29, 2022. The mandatory rules do not apply to plans in existence prior to December 29, 2022.

Q. How long do employees have to opt out of the automatic enrollment feature?

A. The new plan must permit employees to opt out and withdraw amounts (plus earnings) that were automatically contributed to the plan within 90 days of the date such amounts were first contributed. As they were before SECURE 2.0 Act, these withdrawals continue to be exempt from the 10% penalty tax on early distribution.

Q. How are existing Safe Harbor plans impacted by new automatic enrollment rules?

A. If the existing plan was established before December 29th, 2022, the new automatic enrollment rules do not apply. If the plan was established after that date, the new rules would apply starting in 2025. The fact that the plan is a safe harbor plan does not change the application of the automatic enrollment provisions.

Q. If a company transitions from a MEP and starts a 401(k) plan under their EIN, are they considered a new plan and thus required to have automatic enrollment?

A. It is not clear but it may be the law requires any plan that was not established prior to December 29th, 2022 to include automatic enrollment. It would be likely that a plan established as a MEP prior to that date to continue to be grandfathered into the old rules so that a new 401(k) plan would not trigger the application of the new rules. Future guidance from the IRS should clarify that.

Q. We already have automatic enrollment starting at 3% with an auto-escalation feature that is capped at 6%. Are we required to go up to 10%?

A. No, existing plans (those established prior to December 29, 2022) are exempt from the SECURE 2.0 Act automatic enrollment and automatic escalation provisions.

Roth Contributions

Optional and Required Provisions

Q. Are matching contributions designated as Roth subject to Social Security and Medicare tax?

A. No, SECURE 2.0 provides that a plan may permit an employee to designate employer matching or non-elective contributions as Roth contributions, for contributions made after December 29, 2022. Such contributions are subject to income tax – as intended – but are excluded from wages for FICA purposes.

Q. Are matching contributions made as Roth deductible by the business entity for income tax purposes?

A. The tax law provides that if you are a sole proprietor, a partner in a partnership or LLC member, you can deduct from your personal income contributions you make to a retirement plan. If you have incorporated your business, the corporation can deduct contributions that it makes to a retirement plan as a business expense. This tax law provision was not changed by SECURE 2.0 and would continue to apply to employer contributions that are taxed to the employee as Roth contributions. Check with your tax professional.

Q. Will the matching contribution provision made as Roth also apply to profit sharing contributions?

A. Yes,employers may permit employees to elect that employer matching and non-elective contributions (profit sharing contributions) be made as Roth contributions. However, such employer contribution amounts must be 100% fully vested when contributed to the plan.

Q. How will employees who earn over $145K have their catch-up contributions deposited to a Roth IRA? Is there an income limit for Roth plans?

A. The SECURE 2.0 provision requiring catch-up contributions as Roth only applies to 401(k), 403(b) and 457 plans. SIMPLE IRA and SEP plans are excluded from this rule.

Q. Is the Roth catch-up contribution required regardless of how long the 401(k) plan has been in effect?

A. Effective for tax years beginning after December 31, 2023, SECURE 2.0 Act requires that any retirement plan (except a SARSEP or SIMPLE IRA plan) that permits catch-up contributions must treat any catch-up contributions made by certain "High-Paid Participants" as designated Roth contributions.

Required Minimum Distributions (RMDs)

Required Provision

Q. If an individual turned 72 in 2022, when is he/she required to take their first RMD?

A. Individuals who turn 72 in 2022 (born in 1950) are still required to start their RMDs for 2022. The first distribution must be made by April 1, 2023. Employees who turn age 72 in 2023 or later are subject to the new rules and do not need to start taking RMDs until age 73.

Q. For individuals turning 73 in 2023, when is the first required minimum distribution?

A. For individuals born in 1951, the first distribution must be taken by April 1, 2024.

Student Loan Match
Optional Provision

Q. Is an employer allowed to match both the employer match and the loan payment match?

A. Yes, this optional provision allows for employers to make matching contributions to an employee's 401(k) plan, 403(b) plan or SIMPLE IRA based on qualified student loan payments beginning in 2024. Employers may make matching contributions to both elective deferrals and loan payments, but not in excess of the regular matching contributions that are available in the plan. For example, if the plan matches 100% of the first 4% of pay, and an employee is contributing 3% in elective deferrals, and their student loan payments are 3% of pay, they could get an additional 1% on the student loan payments.

Q. Does the student loan match apply to employees who do NOT contribute to the retirement plan?

A. Yes, the student loan match applies to both employees who contribute to the retirement plan and those who do not contribute to the plan, but employees need to be eligible for the plan in order to be eligible for the student loan match.

Q. Is the employer's contribution match to student loans deposited into the retirement fund or is it applied to the student loan balance?

A. The employer student loan matching contribution will be deposited into an account for the employee within the company's retirement plan.

Q. Is the student loan match capped based on the plan provisions?

A. Yes. A plan sponsor can only match up to the plan limits, so if the plan matches employee contributions up to 4% of pay, the plan can only match student loan payments up to 4% of pay.

Q. Is the student loan payment limited to the student? If a parent took out a student loan on behalf of a child, can the parent use those payments for a 401(k) match?

A. It appears based on the Act that any qualified student loan payment taken by an employee on behalf of themselves, a spouse, or a dependent would qualify but we need additional guidance from the IRS on this question.

Emergency Savings Account (ESA)
Optional Provision

Q. Does the emergency savings account count as 401(k) contributions?

A. Yes, contributions to an ESA are aggregated with other elective deferrals for purposes of calculating the contribution limits, non-discrimination testing and matching contribution limits.

Q. Is the emergency savings provision for new or existing retirement plans?

A. The emergency savings provision applies to both new and existing retirement plans.

Q. What is the annual cap for the emergency savings account?

A. The cap for the ESA is $2,500 or a lesser amount as determined by the plan. Once the ESA account balance reaches that limit, no further contributions are allowed until the account again falls below the limit. There can be no minimum contribution or balance requirements and participants must be allowed at least 1 withdrawal per month.

Roth Catch-up Contributions

Required Provision

Q. How is the $145,000 income limit for catch-up contributions managed if an employee has more than one W-2?

A. Starting in 2024, individuals who are age 50 or older, and made more than $145,000 in wages in the previous tax year with the same employer, would be required to make their catch-up contributions in after tax Roth dollars to their current qualified retirement plan. Here is an example to better illustrate this:

Brenda is 54 and was hired by ABC Company on July 1, 2024, with an annual salary of $160,000. Brenda had no wages from ABC Company (her current employer) in 2023, so she would be eligible to make her catch-up contribution all in pre-tax dollars. For the 2025 plan year, Brenda must determine if her wages were over the $145,000 threshold based on the previous year's W2 (2024). Since she only worked for half of the year with ABC Company, her total wages were $80,000, which is below the $145,000 threshold. Therefore, she will also be able to make a pre-tax Roth catch-up contribution in 2025.

Q. Does the $145,000 income limit for catch-up contributions include all income including bonuses and is the limit based upon gross wages or taxable wages?

A. Yes, the $145,000 income limit for catch-up contributions includes bonuses and is based on gross wages for FICA purposes.

Q. What happens if my 401(k) plan doesn't allow for Roth contributions?

A. Roth deferrals are an optional feature that an employer can choose to offer to their employees. It's important to note that with the new mandatory Roth catch-up rule for high wage earners, if the plan does not allow Roth contributions, then ALL employees in the plan will be blocked from making catch-up contributions regardless of whether an employee made over the $145,000 wage threshold in the previous year.

SIMPLE & SEP

Q. Do the Roth catch-up contribution provisions apply to SEP & SIMPLE IRA plans?

A. No, the Roth catch-up contributions only apply to 401(k), 403(b) and 457 plans. SIMPLE and SEP IRAs are not impacted by this requirement.

Q. Does the $1,000 employer contribution tax credit apply to SEP and SIMPLE IRA's?

A. Yes, the $1,000 employer contribution tax credit applies to both SEP and SIMPLE IRA's.

Q. What, if any are the catch-up contributions for SIMPLE IRA's?

A. For SIMPLE IRA plans, the limit on catch-up contributions for individuals ages 50 and older is $3,500 for 2023. Individuals ages 60-63 will increase to the greater of $5,000 or 150% of the regular catch-up amount beginning in 2025, indexed for inflation.

Saver's Match

Optional Provision

Q. What is the income limit for the Saver's Match?

A. The match phases out between $41,000 and $71,000 in the case of taxpayers filing a joint return ($20,500 to $35,500 for single taxpayers and married filing separate; $30,750 to $53,250 for head of household filers). The Saver's Match is effective for taxable years beginning after December 31, 2026.

Q. Regarding the Saver's Match - if someone has fully funded an IRA up to their annual limit, is the $2,000 federal match over-and-above the limit?

A. The match will equal up to 50% of the first $2,000 contributed by an individual to an employer-sponsored retirement account each year or IRA and will be a federal matching contribution deposited into the individual's IRA or retirement plan. The match is subject to phasing out at certain income levels.

Q. Do employees that contribute to a 401(k) plan qualify for the Saver's Match or is it just for standalone IRA's?

A. The Saver's Match applies to both employer-sponsored retirement plans (such as 401(k) plans) and IRA's.

Starter-k

Optional Provision

Q. Will Starter-k plans have IRS filing requirements?

A. Yes, there will be reporting required to the IRS and DOL.

Q. Is the Starter-k deferral amount of $6,000 in addition to an employee's IRA contribution amount?

A. The limit on annual deferrals would be the same as the IRA contribution limit, which for 2022 is $6,000 with an additional $1,000 in catch-up contributions beginning at age 50.

More questions?

For more information on the SECURE 2.0 Act of 2022, retirement plan specialists are available to assist.

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