



ADVANCED MARKETS MATTERS

SECURE Scope

Get to Know SECURE 2.0 (Part I)

President Biden signed the Consolidated Appropriations Act of 2023 into law on Dec. 29, 2022. Title T of this massive omnibus reconciliation legislation contains the SECURE 2.0 Act of 2022. While SECURE 2.0 lacks anything as impactful as the first SECURE's elimination of the stretch, it does include dozens of mostly helpful changes. Some ("Immediate") take effect as soon as the date of enactment or for tax years ending after the date of enactment. Others ("Later Years") don't start for two, three or 10 years. This "Part I" highlights the immediate changes.

Immediate Relief

RMDs

- The RMD age is increased to 73 for individuals who attain age 72 after 2022. Those who attained age 72 in 2022 or before are already subject to RMDs and are unaffected. One delayed provision increases the RMD age to 75 for individuals who turn age 74 after 2033.
- Effective for calendar years ending after 12/29/22, payments from annuitized IRA funds may be aggregated with payments from non-annuitized IRA funds to meet RMD requirements. The value of any annuitized IRA contracts must be added to the prior year's account balance of all non-annuitized IRAs to calculate the RMD and then the annuitized payments can be added to the RMDs taken from the non-annuitized accounts. If a qualified plan has a portion of its funds annuitized, the plan may allow the two portions to be aggregated as well.
- Effective for tax years beginning after 12/29/22, the excise tax on missed RMDs is reduced from 50% to 25% and further reduced to 10% if corrected in a timely manner (generally before the end of the second tax year following the year in which the distribution should have been made).

Qualified Longevity Annuity Contracts (QLACs)

- QLACs purchased or exchanged on or after 12/29/22 will no longer be subject to the "25% of plan assets" limitation and the contribution limit will be increased to \$200,000, subject to indexing beginning in 2024.
- Contracts purchased earlier will continue to be subject to both the 25% and the \$155,000 (as indexed for 2023) limits. Clients wishing to contribute the dollar difference will need to purchase or exchange for a new contract.

Qualified Charitable Distributions (QCDs)

- In addition to allowing up to a \$100,000 QCD each year, for tax years beginning after 12/30/22, a one-time election to donate up to and including \$50,000 to a charitable remainder trust or charitable gift annuity will be treated as a QCD to the extent the contribution would otherwise be deductible as a charitable deduction. These charitable vehicles must be funded solely by QCDs, income interests must be held by only the IRA owner and/or spouse and distributions from these vehicles must be treated as ordinary income by the beneficiary. The dollar limits will be indexed for tax years beginning after 2023.

Roth-Based Revenue Provisions

SIMPLE IRAs, similar to other elective deferral plans, are permitted to accept Roth contributions for tax years beginning after 2022. Similarly, even though SEPs only allow employer contributions, employees may elect for such employer contributions to be made to a designated Roth IRA and to have such contributions not be excluded from income.

Elective deferral plans are permitted to allow employees to elect to have employer matching or nonelective contributions be made as Roth contributions, effective for contributions made after 12/29/22. Plan sponsors will need time to implement such a major change.

10% Early Distribution Penalty

An exception to the 10% early distribution penalty is added for distributions to certain terminally ill individuals made after 12/29/22. Taxpayers may repay such a distribution at any time during the three-year period beginning on the day after the date on which such distribution was received.

A three-year repayment period replaces the unlimited repayment period applicable to the exception for qualified birth or adoption distributions for such distributions taken after 12/29/22. For such distributions taken on or before 12/29/22, taxpayers have until Jan. 1, 2026 to repay those distributions.

Effective for distribution made after 12/29/22, the exception to the 10% early distribution penalty for qualified public safety employees in governmental plans who separate from service after age 50 is extended to those with 25 years of service if earlier. Also, private sector firefighters and corrections officers who are employees of state and local governments are added to the group of qualified public safety employees eligible to take such penalty-free distributions.

Excess Contributions to IRAs

Effective on 12/29/22, any net income required to be distributed with an excess contribution in a corrective distribution will still be included in income but will no longer be subject to the 10% early distribution penalty.

Taxpayers no longer need to file a Form 5329 to start the statute of limitations for excess contributions to or certain accumulations in IRAs. Filing Form 1040 for the year in which the violation occurs will start the appropriate statute of limitations – six years in the case of excess contributions and three years in other cases.

Prohibited Transactions in IRAs

Effective for tax years beginning after 12/29/22, if a taxpayer has multiple IRAs, only the IRA in which the prohibited transaction occurs is disqualified and the fair market value of that separate IRA is deemed distributed on the first day of that tax year.

Next Up: Part II highlights SECURE 2.0 changes effective for later years.

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