SECURE 2.0: What It Might Mean For 401(k) Providers

By Ary Rosenbaum, Esq.

When I took a bankruptcy course with Professor Bernie Corr, he joked that the Federal Government changed the Bankruptcy Code every few years to give bankruptcy attorneys business. A change in the law for retirement plans will give retirement plan providers some new business, but it also can create agita. This article is all about SECURE 2.0 and some of the provisions that might be of interest to 401(k) plan providers.

Automatic Enrollment and Escalation. Employers who start new retirement plans after December 29, 2022 (the date that SECURE 2.0 was signed into law), beginning in 2025, will be required to automatically enroll participants in their retirement plan from three percent to 10 percent of compensation. Participants may opt out by declining to participate. In addition, contribution percentages must automatically increase by one percent on the first day of each plan year following the completion of a year of service until the automatic contribution is at least 10 percent, but no more than 15 percent of compensation. New companies that have been in business for less than three years and employers with 10 or fewer workers are excluded from this requirement. An Automatic Enrollment plan must allow employees to withdraw automatic contributions and any earnings within no more than 90 days of the first contribution without being subject to the 10% penalty on early withdrawals. While there are some plan providers that hate automatic enrollment and escalation since it compels participation, it has been a great way for participants to defer in a 401(k) plan when they might not have in the past. More deferrals in a 401(k) plan mean more money for financial advisors.

Optional Roth Treatment of Employer Contributions. Effective immediately, plan sponsors may amend their plans to permit plan participants to elect that employer matching and profit-sharing contributions are made as Roth (after-tax) contributions, as long as they are 100 percent vested when contributed to the plan. This provision, I can't imagine it being popular since it would require plan sponsors to fully vest contributions when they might have a vesting schedule for contributions. Plan sponsors like vesting schedules and they like forfeitures, I can't imagine them giving that up.

Student loan debt. Starting in 2024, plan sponsors will be able to "match" employee student loan payments with matching payments to a retirement account, giving workers an extra incentive to save while paying off educational loans. Plan sponsors will be able to rely on the employee to certify annually the amount of their qualifying student loan payments. While this codifies an earlier ruling by the Internal Revenue Service, this might be a provision that plan sponsors might not be interested in allowing this provision, since it requires more hoops to jump through, especially linking matching contributions to a participant's student debt.

Emergency savings. Starting in 2024, 401(k) plans will be able to add an emergency savings account that is a designated Roth account eligible to accept participant contributions for non-highly compensated employees. Contributions would be limited to $2,500 annually (or lower, as set by the plan sponsors) and the first 4 withdrawals in a year would be tax and penalty-free and don't need to be substantiated to show a qualifying emergency. Plan Sponsors may automatically opt employees into these accounts at no more than three percent of eligible wages. Employees can opt out of participation. Employee contributions to an emergency savings account must be eligible for the same matching contributions that apply for elective deferrals. Matching contributions are made to the 401(k) plan – not to the emergency savings account. While plan providers will push these savings accounts, they seem very complicated and I think most plan sponsors will not offer them.

Expanded Credit for Plan Administrative Costs. Currently, plan sponsors with less than 100 employees may be eligible for a three-year start-up tax credit

of up to 50 percent of administrative costs, with an annual limit of $5,000. SECURE 2.0 increases this credit to 100 percent of qualified start-up costs for employers with up to 50 employees. An additional credit of up to $1,000 per employee for eligible employer contributions may apply to employers with up to 50 employees but phases it from 51 to 100 employees. As a retirement plan provider, the expanded credit is like manna from heaven, as it's a great boost to get employers to adopt a new plan. I think the biggest problem with the credits is both plan providers and potential plan sponsors taking advantage of them.

Saver's Match. Starting in 2027, lower-income employees will be eligible to receive a federal matching contribution of up to $2,000 per year that would be deposited into their 401(k) account. The matching contribution is 50 percent of the employee's salary deferrals but is phased out as income increases. This match replaces the current Saver's Credit. How will the federal government get to deposit these matching contributions into a 401(k) plan? Beats me, but I understand why it will only be implemented 4 years away

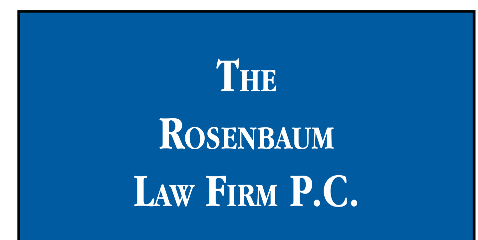
De Minimis Incentives for Plan Participation allowed. Currently, Plan Sponsors can only provide matching contributions as an incentive for employees to participate in a 401(k) plan. Starting for plan years beginning after 2022, plan sponsors may offer some financial incentives, such as gift cards, to help increase plan participation. However, any financial incentives should be of de minimis amounts (no sports tickets) and can't be paid with plan assets. Expect many enterprising plan providers with an eye for marketing, to exploit this provision and work with plan sponsors clients to get more participants to defer. In a business that sometimes lacks creativity, this is a simple provision that plan providers should take advantage of.

Retirement Savings "Lost and Found." Within two years, an online searchable database will be created to allow a retirement plan participant or beneficiary to search for contact information for plan administrators of plans in which the participant or beneficiary may have a benefit. Beginning in 2025, plans will be required to share information with the Department of Labor to be included in the database. When the law says plans will be required to share information, that really means third-party administrators, that will be required to transmit the information to the government.

Increase of self-correction. SECURE 2.0 bolsters the self-correction program under the Employee Plans Compliance Resolution System ("EPCRS") to allow more types of errors to be corrected internally (without having to file to the Internal Revenue Service's Voluntary Compliance Program (VCP)) and to exempt certain failures to make required minimum distributions from the excise tax. For plan providers, such as TPAs and ERISA attorneys like yours truly, more self-correction allows for easier fixes for plan sponsors and less billable legal work. Like the old determination letter program, the Internal Revenue Service wants to receive fewer VCP submissions.

Retroactive amendments are allowed until the tax filing date. SECURE 2.0 will allow retroactive discretionary amendments increasing benefits (except matching contributions) to be made up to the plan's 5500 filing date (or, for single-employer plans, the employer's tax-filing date). Currently, the requirement is that these retroactive amendments must be made by the end of the plan year in which they are effective. This provision is effective for plan years beginning after December 31, 2023. Like with SECURE 1.0's extended deadline for signing documents for new plans, this will certainly give retirement plan providers more breathing room in implanting change to their clients' 401(k) plans.

Section 403(b) MEPs and PEPs. 403(b) plans are still separate from 401(k) plans, but the Federal government has tried to make them almost alike. Another way they have done this is by allowing Multiple Employer Plans (MEPs) and Pooled Employer Providers (PEPs) for 403(b) plans. The fact is while it is an opportunity for plan providers that push these plans, it will be as slow in growing 403(b)



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