

What you should know about the House's new 401(k) legislation

Figuring that defined-contribution plans such as 401(k)s weren't nearly secure as they should be after the passage of the Setting Every Community Up for Retirement Enhancement Act of 2019, Congress is taking another stab at it with the Securing a Strong Retirement Act of 2021 (H.R. 2954) or SECURE 2.0.

The House passed the bill yesterday under something called suspension of the rules, which is usually reserved for uncontroversial legislation. The bill now heads to the Senate, where it will probably be amended.

Auto-enrollment for everyone (almost)

Under SECURE 2.0, all-new 401(k) plans would be required to auto-enroll employees; employees would need to opt-out to get their full salary. Their initial pretax deductions would range from 3% to 10%. Pretax deductions would increase by 1% each year, until they reach at least 10%. SECURE 1.0's maximum pretax deduction of 15% would remain.

The following employers would be excluded from the bill's auto-enrollment provisions:

- Employers with current 401(k) plans.
- New employers in business for fewer than three years.
- Employers with 10 or fewer employees.
- Church plans.
- Government plans.

This provision would become effective for plan years beginning after Dec. 31, 2023.

Editor's note: Newly covered employers would be entering a thicket of ERISA and tax rules the likes of which they never could have anticipated. In addition, this provision doesn't mention anything about employer matching contributions. Employers could, however, take a large bite out of regulatory compliance by buying off-the-shelf safe-harbor plans from vendors.

Auto-enrollment plans may be subject to errors. The bill would also establish a safe harbor for reasonable administrative errors, provided the following criteria are met:

- The error is corrected within 9½ months after the end of the plan year during which the error occurred.
- The correction favors employees.
- The error is of a type that's corrected for all similarly situated employees in a nondiscriminatory manner.

Tax credits for start-up costs

Buying a safe-harbor plan that satisfies the 401(k) nondiscrimination tests isn't cheap. So SECURE 2.0 would modify the tax-credit provisions of SECURE 1.0 (50% of administrative costs, up to \$5,000 for three years) by increasing it to 100% for employers with up to 50 employees.

This provision would be effective with tax years beginning after Dec. 31, 2022.

Required minimum distributions

SECURE 1.0 raised the age at which employees must begin taking required minimum distributions to the later of when they turn 72 or April 1 following the year they retire. Previously, the RMD trigger was age 70½.

SECURE 2.0 would raise the age again to:

- 73 starting Jan. 1, 2023
- 74 starting Jan. 1, 2030
- 75 starting Jan. 1, 2033.

Catch-up contributions

Employees who are 50 years old or older can make pretax catch-up contributions into their 401(k) accounts. For 2022, the catch-up contribution amount is \$6,500.

SECURE 2.0 would increase the catch-up contribution amount to \$10,000 for employees who are 62, 63, or 64 years old.

This provision would become effective for tax years beginning after Dec. 31, 2022.

Student loans and 401(k) plans

Several years ago, an employer [asked](#) the IRS whether it would violate the 401(k) rules if it made a 5% nonelective contribution into the accounts of employees who paid back their student loans at the rate of 2% of their 401(k) eligible compensation every pay period.

The IRS said this setup was OK but with a ton of caveats. The major one is that the IRS' advice was delivered in a private letter ruling to this employer and PLRs can't be relied on or cited as precedent.

SECURE 2.0 would allow employees who are paying back their student loans to receive employer matching contributions. In order for student loan payments to qualify, employees would be required to certify to their employers they've been paying back their loans. Employers would be permitted to rely on these certifications.

Part-time employees

SECURE 1.0 required employers to allow long-term part-time employees (i.e., those who worked at least 500 hours a year for at least three consecutive years and who are at least 21 years old) to make pretax contributions into a 401(k) plan by the earlier of the first day of the first plan year beginning after the date on which they satisfy the age and service requirements or the date six months after the date on which they satisfy these requirements.

SECURE 2.0 would reduce the three-year rule to two years.

This provision would become effective for plan years beginning after Dec. 31, 2022.

Lost and found

Employers have a duty to find missing plan participants. This often isn't easy to do.

SECURE 2.0 would create a national online, searchable lost-and-found database for retirement plans at the

Department of Labor.

The DOL would have two years after the date this bill is enacted to create the database.