Technical Fixes to SECURE Act 2.0?

December 14, 2023

Take-Away: Some of the provisions of the SECURE Act 2.0 that need fixing may soon take place. The House and Senate released last week a technical corrections bill that addresses, in part, the 'mess' that was created with the change to catch-up contributions.

Background: The SECURE Act 2.0 made some important changes to retirement planning, including contributions to, and distributions from, qualified plans. In the process of making these changes, some mistakes were also made, probably because Congress waited until the last days of 2022 to scramble and pass the Act. However, it appears that Congress is about to fix the problems that it created with its hurried legislation. A key change that is addressed in the proposed technical corrections bill follows.

Catch-up Contributions: Perhaps the biggest 'technical mistake' was about catch-up contributions by account owners who are age 50 or older.. Under Section 603 of the Act, the result of that change was that no participant would be able to make *any* catch-up contribution starting in 2024. This problem was caused when an existing subparagraph in the Tax Code was dropped to allow a conforming amendment. In August 2023, the IRS released guidance that addressed Section 603 by granting a two-year delay in the provision's effective date that mandates all catch-up contributions must be Roth contributions, i.e., using after-tax dollars, for those individuals who ear more than $145,000. Consequently, catch-up contributions can now be made by retirement account owners on a pre-tax basis through 2025, regardless of their reported income. [A surprise to me was that the IRS apparently thought it had the authority to override what the amended Tax Code permitted.] This mistake would be corrected, and pre-tax catch-up contributions would be authorized under the Tax Code through 2025.

Simple IRAs: Many small businesses utilize SIMPLE IRAs as a retirement savings option. They are supposed to be easier to administer than a traditional 401(k) plan, with direct contributions to the employee's IRA. Sadly, the rules that

govern SIMPLE IRAs are confusing, since in part they are treated as IRAs and in party they are treated as qualified plans. The SECURE Act 2.0 makes contributions to SIMPLE IRAs even more confusing.

- A SIMPLE IRA allows for both elective deferrals and employer contributions. The employer contribution can be a matching contribution for employees who make salary deferrals. The employer's match is a dollar-for-dollar match on deferrals, taking into consideration deferrals up to 3% of pay. Or the employer contribution can be an across-the-board contribution for all eligible employees equal to 2% of pay.
- The elective deferral limits have traditional been a maximum amount for employees under age 50 and an additional 'catch-up' amount for those age 50 or older. For 2023, the under-50dollar limit was $15,500 and the catch-up limit was $3,500. Both of those limits are adjusted periodically to reflect cost-of-living. The increase in these amounts for 2024 adjusted for cost-of-living are: (i) the under-50 limit will go up to $16,000, while the catch-up contribution limit will remain at $3,500.
- Now, with the Act, starting in 2024, both the under-50 limit and the catch-up limit will increase by 10% above the $16,000/$3,500 limits- but only for employer sponsors with 25 or fewer employees. As a result, for those very small employer sponsors, the 2024 under-50 limit is $17,600 ($16,000 x 10%), and the catch-up limit is $3,850 ($3,500 x 10%). An employer sponsor with 26 to 100 employees can elect the extra 10%, but only if the employer sponsor provides a 4% (instead of 3%) matching contribution or a 3% (instead of 2%) across-the-board contribution for all employees.
- Beginning in 2024, SIMPLE IRA employer sponsors can make an additional employer across-the-board contribution to all employees who have at least $5,000 of pay for the year. This additional contribution can be up to 10% of pay, but no more than $5,000. It is available for employer sponsors that make their 'regular' employer contribution as a match.
- Confused yet? Imagine adding to this complexity contributions to Roth SIMPLE IRAs now authorized under the SECURE Act 2.0. (Section 601) The proposed technical corrections bill promises to 'simplify' (was it an intended pun?) the rules that pertain to elective deferrals to SIMPLE IRAs.

Other Technical Changes: A short summary of some of the other provisions that appear to be addressed in the technical corrections bill follow:

- Expands the automatic enrollment in retirement plans (Section 101)
- Clarifies the 'Saver's Match' (Section 103)
- Clarifies the increase in age for required beginning date (RBD) for mandatory distributions (Section 107)
- Clarifies the catch-up limit, i.e., the increased amount, to apply at ages 60, 61,62 and 63 (Section 109)
- Clarifies the treatment of student loan payments as elective deferrals for purpose of matching employer contributions (Section 110)
- Improves coverage for part-time employees (Section 125)
- Clarifies the rules for certain distributions from long-term qualified tuition programs, i.e., 529 accounts, to Roth IRAs (Section 126) and
- Enhances retiree health benefits in pension plans (Section 606.)

Conclusion: There is no indication when, if ever, this technical corrections bill will be enacted, or the effective date for any of the promised changes. There is hope, though, since it apparently has bipartisan support in Congress, and perhaps Congress is incented to fix the mess it created when it hurried the law without reading it.