Secure Act 2.0 | Changes and Effective Dates

The Entrust Group

SECTION	BACKGROUND	CHANGE/NEW PROVISIONS	EFFECTIVE DATE	ROTH	IRA	401(K)	SIMPLE	SEP
SECTION 102 Business Startup Credit Increased *Page 819*	The three-year small business startup credit is currently 50% of administrative costs, up to an annual cap of $5,000.	Increases the small business startup credit from 50% to 100% for employers with 50 employees or fewer, up to a per-employee cap of $1,000. Section 102 also creates a new credit for plans other than defined benefit plans that is based on the amount of money contributed to participant accounts.	Section 101 is effective January 1, 2023.				◆	◆
SECTION 103 Changes the Saver's Credit *Page 821*	Current law provides for a nonrefundable credit for certain individuals who make contributions to IRAs, employer retirement plans, and ABLE accounts.	Transforms the Saver's Credit from a credit paid in cash as part of a tax refund into a federal matching contribution that must be deposited into a taxpayer's retirement plan. The match is 50% of retirement plan contributions up to $2,000 per individual, phasing out at certain income levels.	Section 103 is effective for taxable years beginning after December 31, 2026.		◆	◆	◆	
SECTION 104 Congress Directs Treasury to Promote Saver's Match *Page 828*		Congress directs the Treasury Department to increase public awareness of the Saver's Match, as part of a larger effort to increase use of the Match by low and middle-income taxpayers. Taxpayers will have an election to designate which retirement account will receive the Saver's Match.	The Treasury Secretary must report to Congress on the Treasury Department's anticipated promotion efforts no later than July 1, 2026.		◆	◆	◆	
SECTION 107 Required Minimum Distribution Age Increases *Page 831*	Under current law, participants are generally required to begin taking distributions from their retirement plans at age 72.	Increases the required minimum distribution age to 73 starting on January 1, 2023, and increases the age further to 75 starting on January 1, 2033.	Section 107 is effective for taxable years beginning after December 31, 2022.		◆	◆	◆	◆
SECTION 108 Catch-Up Limits Indexed For Inflation *Page 831*	Under current law, individuals aged 50 or older may increase their annual contributions to an IRA by up to $1,000 (not indexed).	Section 108 indexes catch-up contribution limits for inflation.	Section 108 is effective January 1, 2024.	◆	◆		◆	◆
SECTION 109 Higher Catch-Up Limits For Those Aged 60-63 *Page 832*	Under current law, employees aged 50 or older are permitted to make catch-up contributions under a retirement plan in excess of the otherwise applicable limits. The limit on catch-up contributions for 2021 is $6,500, except in the case of SIMPLE plans, for which the limit is $3,000.	Section 109 increases these limits for those aged 60-63 to the greater of $10,000 or 50% more than the regular catch-up amount in 2025. The increased amounts are indexed for inflation after 2025.	Section 109 is effective for taxable years beginning after December 31, 2024.	◆	◆	◆	◆	◆
SECTION 110 Employers May Treat Student Loan Payments As Contributions For Matching Purposes *Page 832*		Section 110 allows employers to treat an employee's "qualified student loan payments" as retirement contributions for matching purposes. This provision applies to SIMPLE IRAs, 401(k) plans, 403(b) plans, and 457(b) plans.	Section 110 is effective for contributions made for plan years beginning after December 31, 2023.			◆	◆	

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SECTION 112 Small Employer Tax Credit For Military Spouses *Page 836*	Military spouses often do not remain employed long enough to become eligible for their employer's retirement plan or to vest in employer contributions.	Section 112 provides small employers a tax credit if they ▪ Make military spouses immediately eligible for plan participation within two months of hire ▪ Upon plan eligibility, make the military spouse eligible for any matching or nonelective contribution that they would have been eligible for at 2 years of service, and ▪ Make the military spouse 100% immediately vested in all employer contributions. The tax credit equals the sum of: ▪ $200 per military spouse, and ▪ 100% of all employer contributions (up to $300) made on behalf of the military spouse, for a maximum tax credit of $500. This credit applies for three years with respect to each military spouse, and does not apply to highly compensated employees. An employer may rely on an employee's certification that such employee's spouse is a member of the uniformed services.	Section 112 is effective for taxable years beginning after December 29, 2022.			◆	◆	
SECTION 113 Small Immediate Financial Incentives Allowed *Page 837*	Under current law, employers may provide matching contributions as a long-term incentive for employees to contribute to a 401(k) plan. However, immediate financial incentives (like gift cards in small amounts) are prohibited even though individuals may be especially motivated by them to join their employers' retirement plans.	Section 113 enables employers to offer de minimis financial incentives, not paid for with plan assets, such as lower-value gift cards, to boost employee participation in workplace retirement plans.	Section 113 is effective for taxable years beginning after December 29, 2022.			◆	◆	
SECTION 115 Penalty-Free Distributions for Certain Emergency Expenses *Page 838*	Generally, an additional 10% tax applies to early distributions from tax-deferred retirement accounts, such as 401(k)s and IRAs, unless an exception applies.	Section 115 provides an exception for certain distributions used for emergency expenses. Emergency expenses are unforeseeable or immediate financial needs relating to personal or family emergencies. Only one distribution is permissible per year of up to $1,000, and a taxpayer has the option to repay the distribution within three years. No further emergency distributions are permissible during the three year repayment period unless repayment occurs.	Section 115 is effective for distributions made after December 31, 2023.		◆	◆	◆	◆
SECTION 116 Employers May Make Larger Contributions to SIMPLE Plans *Page 840*	Current law requires employers with SIMPLE plans to make employer contributions to employees of either 2% of compensation or 3% of employee elective deferral contributions.	Section 116 permits an employer to make additional contributions to each employee of the plan in a uniform manner, provided that the contribution may not exceed the lesser of up to 10% of compensation or $5,000 (indexed).	Section 116 is effective for taxable years beginning after December 31, 2023.				◆	

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SECTION 117 Increases Deferral Limits For SIMPLE Plans *Page 841*	Under current law, the annual contribution limit for employee elective deferral contributions to a SIMPLE IRA is $15,500 and the catch-up contribution limit beginning at age 50 is $3,500 (2023). A SIMPLE IRA plan may only be sponsored by a small employer, and the employer is required to: ▪ Make matching contributions on the first 3% of deferred compensation, or ▪ Contribute 2% of employee compensation, regardless of the employee's contribution.	Section 117 increases the annual deferral limit and the catch-up contribution at age 50 by 10% in the case of an employer with no more than 25 employees. An employer with 26 to 100 employees is permitted to provide higher deferral limits, but only if the employer either provides a 4% matching contribution or a 3% employer contribution.	Section 117 is effective for taxable years beginning after December 31, 2023.				◆	
SECTION 118 Employers May Provide SEP Plans For Domestic Employees *Page 844*		Section 118 permits employers of domestic employees (e.g., nannies) to provide retirement benefits under a Simplified Employee Pension (SEP).	Section 118 is effective for taxable years beginning after December 29, 2022.					◆
SECTION 120 Service Providers May Add Automatic Portability Services to Employer Plans *Page 845*	Under current law, an employer is permitted to distribute a participant's account balance without participant consent if the balance is under $5,000 and the balance is immediately distributable (e.g., after a termination of employment). Current law also requires an employer to roll over this distribution into a default IRA if the account balance is at least $1,000 and the participant does not affirmatively elect otherwise.	Section 120 permits a retirement plan service provider to provide employer plans with automatic portability services. Such services involve the automatic transfer of a participant's default IRA (established in connection with a distribution from a former employer's plan) into the participant's new employer's retirement plan, unless the participant affirmatively elects otherwise.	Section 120 is effective for transactions occurring on or after December 29, 2023.		◆	◆	◆	
SECTION 121 Employers Without a Retirement Plan May Provide Starter 401(k) *Page 850*		Section 121 permits an employer that does not sponsor a retirement plan to offer a starter 401(k) plan (or safe harbor 403(b) plan). A starter 401(k) plan (or safe harbor 403(b) plan) would generally require that all employees be enrolled by default at a 3-15% of compensation deferral rate. The annual deferral limit would be the same as the IRA contribution limit for that year.	Section 121 is effective for plan years beginning after December 31, 2023.			◆		
SECTION 125 Expands Coverage for Part-Time Workers *Page 856*	The legislation required that — except in the case of collectively bargained plans — employers maintaining a 401(k) plan must have a dual eligibility requirement. In this structure, an employer must allow enrollment if the employee has completed either: ▪ One year of service (and at least 1,000 hours of service), or ▪ Three consecutive years of service (and at least 500 hours of service).	Section 125 reduces the plan enrollment requirement for part-time employees with at least 500 hours of service from three consecutive years of service to two consecutive years of service.	Section 125 is effective for plan years beginning after December 31, 2024.			◆		

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SECTION 126 Funds in 529 Plans May Rollover To Roth IRA *Page 858*	Families and students have demonstrated concerns about leftover funds being trapped in 529 accounts unless they take a non-qualified withdrawal and assume a penalty. This has led to hesitating, delaying, or declining to fund 529 plans to the levels needed to pay for the rising costs of education.	Section 126 enables 529 plans that have been established for at least 15 years to roll over into a Roth IRA. These rollovers are subject to annual IRA contribution limits, and are reduced by any other Roth IRA contributions made during the taxable year.	Section 126 is effective after December 31, 2023.	◆	◆			
SECTION 127 Employers May Offer Retirement Plan Emergency Savings Accounts *Page 859*	Though individuals can save on their own, far too many fail to do so. According to a report by the Federal Reserve, almost half of Americans would struggle to cover an unexpected $400 expense. Many are forced to tap into their retirement savings. A recent study found that, in the past year, almost 60% of retirement account participants who lack emergency savings tapped into their long-term retirement savings, compared to only 9% of those who had at least a month of emergency savings on hand.	Section 127 provides employers the option to offer pension-linked emergency savings accounts to their non-highly compensated employees. Employers may automatically opt employees into these accounts at no more than 3% of their salary, and the contributions attributable to employees are capped at $2,500 (or lower as set by the employer). Once the cap is reached, additional contributions can be directed to the employee's Roth defined contribution plan (if they have one) or stopped until the balance attributable to contributions falls below the cap. Contributions are made on a Roth-like basis and are treated as elective deferrals for purposes of retirement matching contributions, with a matching cap equal to the maximum account balance. At separation, employees may take their emergency savings accounts as cash or roll it into their Roth defined contribution plan or IRA.	Section 127 is effective for plan years beginning after December 31, 2023.			◆		
SECTION 302 Reduced Penalty for Failing to Take an RMD *Page 881*	Under current law, failure to distribute a required minimum distribution (RMD) would institute a 50% excise tax penalty on the IRA holder or 401(k) participant. The IRA holder could apply for a waiver of this 50% penalty if they had a reasonable cause for not taking the distribution.	Section 302 reduces the penalty for failing to take an RMD from 50% to 25%. If the failure is corrected within a two-year period (subject to certain limitations), the tax may be further reduced to 10%.	Section 302 is effective for taxable years beginning after December 29, 2022.		◆	◆	◆	◆
SECTION 303 Creates Retirement "Lost and Found" *Page 303*	Every year, thousands of people approach retirement but are unable to receive their benefits simply because their former employer moved, changed its name, or merged with a different company. Similarly, every year there are employers around the country ready to pay benefits but are unable to find the retirees because the former employees changed their names or addresses.	Section 303 creates a national online database for Americans' retirement plans at the Department of Labor ("DOL"). The database will enable retirement savers, who might have lost track of their pension or 401(k) plan, to search for their plan administrator's contact information.	Section 303 directs the creation of the database to occur no later than December 29, 2024.			◆		
SECTION 304 Mandatory Distribution Upper Limit Increased *Page 883*	Under current law, employers may transfer former employees' retirement accounts from a workplace retirement plan into an IRA if their balances are between $1,000 and $5,000.	Section 307 increases the limit from $5,000 to $7,000.	Section 304 is effective for distributions made after December 31, 2023.		◆	◆		

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SECTION 305 Expands Employee Plans Compliance Resolution System *Page 883*		Because of the ever-growing complexity of retirement plan administration, Section 305 expands the Employee Plans Compliance Resolution System ("EPCRS") to ▪ Allow more types of errors to be corrected internally through self-correction ▪ Apply to inadvertent IRA errors, and ▪ Exempt certain failures to take RMDs from the otherwise applicable excise tax	Section 305 is effective on December 29, 2022.	◆	◆	◆	◆	◆
SECTION 307 One-Time Qualified Charitable Distribution Expanded *Page 885*	An IRA holder or QRP participant can take a tax-free distribution of $100,000 from their retirement plan by donating the distribution directly to a charitable organization. The amount only applies to the taxable portion of a distribution (does not apply to qualified Roth distributions and nondeductible contributions distributed).	Section 307 expands the IRA charitable distribution provision to allow for a one-time, $50,000 distribution to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts. This section also indexes the annual IRA charitable distribution limit of $100,000 for inflation.	Section 307 is effective for distributions made in taxable years ending after December 29, 2022.		◆	◆	◆	◆
SECTION 311 Repayment of Qualified Birth or Adoption Distribution Limited to Three Years *Page 889*	The SECURE Act included a provision that allows individuals to receive distributions from their retirement plan in the case of birth or adoption without paying the 10% additional tax under Code section 72(t) (known as a qualified birth or adoption distribution, or QBAD). The distributions may be contributed to a retirement plan at any time and are treated as rollovers. The problem with the current law is the allowance of additional contributions at any time. Code section 6511 prevents a refund from being provided to a taxpayer after the period of limitations for the return has closed, which is generally a three-year period. Thus, there would not be a mechanism under the Code allowing someone who took a birth/adoption distribution to re-contribute the distribution more than three years later and amend their return to receive a refund for the taxes that were paid in the year of the withdrawal.	Section 311 amends the QBAD provision to restrict the recontribution period to 3 years.	Section 311 is effective for distributions made after December 29, 2022 and retroactively to the three-year period after the distribution was received.		◆	◆	◆	◆
SECTION 312 Employees May Self-Certify Hardship *Page 889*	Under current law, an employee requesting a hardship must demonstrate their specific level of hardship and number of deferrals needed to their 401(k) plan administrator. The participant must have exhausted all means as part of the demonstration of their eligibility to distribute due to hardship. There are six safe harbor reasons associated with a hardship distribution.	Plan administrators may now rely on employee self-certification of hardship in specific circumstances for purposes of taking a hardship withdrawal.	Section 312 is effective for plan years beginning after December 29, 2022.			◆		

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SECTION 313 Statute of Limitations for Excise Tax Clarified *Page 890*	Under current law, the statute of limitations for excise taxes (imposed for excess contributions or failure to take an RMD) begins when a specific excise tax return (Form 5329) is filed. Individuals often are not aware of the requirement to file Form 5329, and this can lead to an indefinite period of limitations that can cause hardship for taxpayers.	The statute of limitations for excess contributions is now six years from the date the taxpayer files an individual tax return (Form 1040). The statute of limitations for failing to make an RMD is three years from the date the taxpayer files an income tax return.	Section 313 is effective on December 29, 2022.	◆	◆	◆	◆	◆
SECTION 314 Penalty-Free Withdrawals Allowed for Victims of Domestic Abuse *Page 891*	A domestic abuse survivor may need to access his or her money in their retirement account for various reasons, such as escaping an unsafe situation.	Section 314 allows retirement plan holders to self-certify that they experienced domestic abuse and withdraw funds from their account. The maximum withdrawal amount is the lesser of $10,000 or 50% of the participant's account. If the participant repays the money within three years, income taxes will be refunded.	Section 318 is effective for distributions made after December 31, 2023.			◆		
SECTION 315 Reforms for Family Attribution Rule *Page 893*	Under the Code, certain related businesses must be aggregated when performing the coverage and nondiscrimination tests. The aggregation rules are generally based on the degree of common ownership of the businesses. In determining the level of ownership in a business, the tax laws have certain attribution rules whereby an individual is deemed to own stock held by other individuals or entities.	Section 315 updates two stock attribution rules. The first update addresses inequities where spouses with separate businesses reside in a community property state when compared to spouses who reside in separate property states. The second update modifies the attribution of stock between parents and minor children.	Section 315 is effective for plan years beginning after December 31, 2023.			◆	◆	◆
SECTION 316 Longer Time Period For Employers to Adopt Beneficial Amendments *Page 894*	The SECURE Act permits an employer to adopt a new retirement plan by the due date of the employer's tax return for the fiscal year in which the plan is effective. Current law, however, provides that plan amendments to an existing plan must generally be adopted by the last day of the plan year in which the amendment is effective. This precludes an employer from adding plan provisions that may be beneficial to participants.	Section 316 allows employers to institute discretionary amendments that increase participants' benefits to be adopted by the due date of the employer's tax return, rather than by the end of the amendment plan year.	Section 316 is effective for plan years beginning after December 31, 2023.			◆		
SECTION 317 Expansion of Sole Proprietor 401(k) Plan Deferrals *Page 894*	The original SECURE Act established that employers may create a new 401(k) plan after the end of the taxable year, but before the employer's tax filing date, and treat the plan as having been established on the last day of the taxable year. Employers may fund these plans up to the employer's tax filing date.	Section 317 allows these plans, when they are sponsored by sole proprietors or single-member LLCs, to receive employee contributions up to the date of the employee's tax return filing date for the initial year.	Effective for plan years beginning after December 29, 2022.			◆		
SECTION 322 Prohibited Transactions Only Penalize IRAs Involved *Page 898*	When an individual engages in a prohibited transaction with respect to their IRA, the IRA is disqualified and treated as distributed to the individual, regardless of the size of the prohibited transaction.	Section 322 clarifies that if an individual holds multiple IRAs, prohibited transactions in one IRA will be attributed only to that specific IRA.	Effective for taxable years beginning after December 29, 2022.	◆	◆		◆	◆

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SECTION 323 Clarifies Exceptions For Equally Periodic Payments *Page 898*	Current law imposes a 10% additional tax on early distributions from tax-preferred retirement accounts. An exception applies to substantially equal periodic payments that are made over the account owner's life expectancy.	Section 323 provides that the exception continues to apply in the case of an account rollover, an exchange of an annuity providing the payments, or an annuity that satisfies the required minimum distribution rules.	Effective for transfers, rollovers, exchanges after 2023. Effective for annuity distributions on or after December 29, 2022.	◆	◆	◆	◆	◆
SECTION 324 Congress Directs Treasury to Simplify Rollovers *Page 900*		Section 324 requires the Treasury Secretary to simplify and standardize the rollover process by issuing sample forms for direct rollovers that may be used by both the incoming and outgoing retirement plan or IRA.	Development and release of the sample forms must be completed no later than January 1, 2025.	◆	◆	◆	◆	◆
SECTION 325 Roth Employer Plan Accounts Exempt From Pre-Death Minimum Distribution Requirements *Page 901*	Under current law, required minimum distributions are not required to begin prior to the death of the owner of a Roth IRA. However, pre-death distributions are required in the case of the owner of a Roth designated account in an employer retirement plan (e.g., 401(k) plan).	Section 325 eliminates the pre-death distribution requirement for Roth accounts in employer plans.	Effective for taxable years beginning after 2023.			◆		
SECTION 326 Terminally Ill Patients Exempt From Early Distribution Penalty *Page 901*	Under current law, an additional 10% tax applies to early distributions from tax-preferred retirement accounts.	Individuals with a terminal illness may receive distributions from their retirement accounts without incurring the 10% early withdrawal penalty.	Section 326 is effective for distributions made after December 29, 2022.		◆	◆	◆	◆
SECTION 327 Surviving Spouses May Elect To Be Treated as Employees *Page 901*	Under current law, if a participant of a QRP (e.g., 401(k)) passes away, the surviving spouse must establish an inherited account and begin taking life expectancy payments based on their single life expectancy. The exception is if the spouse is also a participant in the plan and the spouse decides to treat their deceased spouse's balance as their own.	Section 327 allows a surviving spouse to elect to be treated as the deceased employee for purposes of the required minimum distribution rules.	Section 327 is effective for calendar years beginning after December 31, 2023.			◆		
SECTION 331 Distributions May Be Taken Penalty-Free if Affected by Federally Declared Disaster *Page 903*	Section 331 provides permanent rules relating to the use of retirement funds in the case of a federally declared disaster.	Affected individuals may receive up to $22,000 in distributions. These distributions are not subject to the 10% early withdrawal tax and may be repaid. In addition, employers may permit larger loans and a longer payback time for affected individuals.	Section 331 is effective for disasters occurring on or after January 26, 2021.	◆	◆	◆	◆	◆
SECTION 332 Employers May Replace Simple Plan With Certain 401(k) Plans *Page 909*	Currently, SIMPLE IRA plans are not eligible to be terminated or changed mid-year.	Employers may now replace a SIMPLE IRA plan with a 401(k) plan that requires mandatory employer contributions.	Effective for plan years beginning after 2023.			◆	◆	

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SECTION 333 Excess IRA Contributions Exempt From Early Withdrawal Tax *Page 910*	Current law requires a distribution if too much is contributed to an IRA. The corrective distribution includes the excessive contribution and any earnings allocable to that contribution.	Excess IRA contributions and earnings are exempt from the 10% withdrawal tax on early distributions.	Effective immediately, and even retroactively in certain cases.	◆	◆		◆	◆
SECTION 337 Modifies RMD Rules for Special Needs Trusts *Page 915*	The SECURE Act placed limits on the ability of beneficiaries of defined contribution retirement plans and IRAs to receive lifetime distributions after the account owner's death. Special rules apply in the case of certain beneficiaries, such as those with a disability.	In the case of a special needs trust established for a beneficiary with a disability, the trust may designate a charitable organization as the remainder beneficiary.	Effective for taxable years beginning after 2022.		◆	◆	◆	◆
SECTION 339 Tribal Governments May Issue Qualified Domestic Relations Orders (QDROs) *Page 339*		Tribal courts are now authorized to issue QRDOs, directing administrators how to divide certain retirement benefits in the case of a divorce.	Effective for orders received after December 31, 2022.		◆	◆	◆	◆
SECTION 601 SEP and SIMPLE Plans May Accept Roth Contributions *Page 932*	Generally, all plans that allow pre-tax employee contributions are permitted to accept Roth contributions with one exception – SIMPLE IRAs.	SIMPLE IRAs may now accept Roth contributions. In addition, employees may treat employer contributions to a SEP IRA as Roth contributions, in part or in whole.	Effective for taxable years beginning after 2022.				◆	◆
SECTION 603 Roth Treatment Required for Most Catch-up Contributions *Page 933*	Under current law, catch-up contributions to a qualified retirement plan can be made on a pre-tax or Roth basis (if permitted by the plan sponsor).	All catch-up contributions to employer-sponsored retirement plans must be made on a Roth basis. Employees who made less than $145,000 in the year are exempt.	Effective for taxable years beginning after 2023.	◆		◆	◆	
SECTION 604 Employers May Match on a Roth Basis *Page 934*	Under current law, plan sponsors are not permitted to provide employer matching contributions in their 401(k), 403(b), and governmental 457(b) plans on a Roth basis. Matching contributions must be on a pre-tax basis only.	Allows plan sponsors to provide participants with matching contributions on a Roth basis.	Effective December 29, 2022.			◆		