T. Rowe Price®
INVEST WITH CONFIDENCE

Davis & Harman LLP/T. Rowe Price
4th Quarter 2022 Webinar Summary

SECURE 2.0 ENACTED INTO LAW

Following the Senate Finance Committee's approval of the Enhancing American Retirement Now (EARN) Act, and the Senate Health, Education, Labor & Pensions (HELP) Committee's approval of the Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg (RISE & SHINE) Act, House and Senate negotiators began reconciling differences among the two Senate bills and the House-passed Securing a Strong Retirement Act (SSRA). On December 20, 2022, Congress released the text of a year-end spending bill titled the Consolidated Appropriations Act of 2023 (CAA of 2023). Among the bill's many titles, Division T includes the final bipartisan legislative package known as the SECURE 2.0 Act of 2022 (SECURE 2.0). On December 29, 2022, President Biden signed the CAA of 2023 into law, which will be used as the date of enactment for all provisions that became effective on the date of enactment. As the name implies, the SECURE 2.0 builds upon the SECURE Act of 2019, and includes multiple provisions that enhance, improve, or modify SECURE Act of 2019 provisions.

Many of the 92 provisions within the SECURE 2.0 Act were previously contained in the RISE & SHINE Act, the EARN Act, or the SSRA, although there were some last-minute changes. For example, one closely watched provision in the prior bills would have allowed 403(b) plans to invest in collective investment trusts (CITs). The final bill includes necessary tax changes, but negotiators ultimately could not reach agreement on parallel changes to the securities law which were needed to open up CITs to all 403(b) plans.

There was only one provision contained in SECURE 2.0 that did not appear in some form in one of the prior bills. The final SECURE 2.0 Act includes a provision allowing for rollovers of unused amounts in 529 college savings accounts to the account beneficiary's Roth IRA. The provision contains a number of restrictions, including that the rollover would be subject to annual Roth contribution limits, and the 529 account must be in existence for a minimum of 15 years.

SECURE 2.0 PROVISIONS IMPACTING RETIREMENT PLANS

Given space constraints, we cannot summarize the nearly 100 provisions in SECURE 2.0; below we address some key provisions that will impact most defined contribution plans. (Expect more detailed information from T. Rowe Price over time as these provisions are analyzed and implemented).

- **New required minimum distribution age.** Beginning on January 1, 2023, the age for mandatory required minimum distributions (RMDs) increased from 72 to 73, with those attaining age 72 in 2022 or earlier left unaffected. The RMD age will increase to 75 in 2033 under the new law.
- **Catch-contribution changes.** Under current law, catch-up contributions to qualified retirement plans can be made on a pre-tax or Roth basis. SECURE 2.0 requires, beginning in 2024, that all age based catch-up contributions be made on a Roth basis. The law allows an exception for employees whose wages (for FICA purposes) are $145,000 or less in the prior year. This is an important provision that plan sponsors should focus on immediately to be prepared for 2024. SECURE 2.0 will also increase the catch-up limit for employees age 60-63 to the greater of $10,000 (indexed) or 150% of the regular catch-up amount, beginning in 2025.
- **Long-term part-time employees.** Also building on the SECURE Act of 2019, SECURE 2.0 reduces the minimum service requirement for long-term part-time employees who must be covered by workplace 401(k) plans. Under the SECURE Act of 2019, employers must allow employees who complete three consecutive years with at least 500 hours of service to participate in the workplace 401(k) plan. The SECURE 2.0 Act reduces the three-year rule to two years, and applies these rules to ERISA-governed 403(b) plans, effective for plan years beginning after December 31, 2024.

(over, please)

- **Missing participants.** SECURE 2.0 includes multiple provisions to address missing and unresponsive plan participants, including a provision to increase the dollar amount for mandatory distributions. Under current law, employers may "cash-out" a terminated employee's account if their account balance less than $5,000. SECURE 2.0 increases the limit from $5,000 to $7,000 for distributions made after December 31, 2023. SECURE 2.0 will also create an online registry, known as the Retirement Savings Lost and Found, housed within the Department of Labor (DOL) that will assist plan participants to locate a retirement account from a prior job.
- **Roth RMDs.** In an effort to align distribution rules for in-plan Roth accounts and Roth IRAs, SECURE 2.0 eliminates the pre-death RMD requirements for Roth accounts in employer plans, effective in 2024.
- **Paper benefit statement.** One of only provisions of the SECURE 2.0 Act that works against modernizing retirement plan administration will require plans to deliver, at least once annually, a paper quarterly benefit statement to participants unless they elect otherwise. The provision includes an exemption for employees who receive electronic documents under the 2002 DOL e-disclosure rules. The provision will be effective for plan years after December 31, 2025.
- **Auto features in new plans.** In order to encourage participation in retirement savings accounts, SECURE 2.0 requires new 401(k) and 403(b) plans to automatically enroll participants upon eligibility at an amount between three and 10 percent of compensation. Plans must also automatically escalate contributions by one percent each year until 10 percent is reached. Importantly, the requirement will not apply to 401(k) or 403(b) plans in existence on enactment, nor will it apply to small businesses with 10 or fewer employees, businesses less than three years old, church plans, or governmental plans. The requirement will be effective in 2025.
- **Saver's Match.** SECURE 2.0 provides for the creation of the "Saver's Match," which will replace the previously nonrefundable Saver's Credit. The "Savers Match" is available for lower income workers to be paid as a government funded contribution into a workplace retirement plan or IRA. The new credit will be effective in 2027.

NEW PLAN DESIGN OPTIONS IN SECURE 2.0

While SECURE 2.0 includes a number of provisions with requirements that plan administrators must address, there are a number of new optional plan design features that employers may adopt. SECURE 2.0 allows plans to offer participants the ability to receive distributions of up to $1,000 per year, similar to qualified birth or adoption distributions, for certain emergency expenses, without incurring the 10% early withdrawal penalty. Another optional emergency savings feature plans may adopt is an emergency savings linked account as part of a defined contribution plan. Under this design, employees may contribute up to $2,500 in Roth contributions to a separate emergency savings account inside of their defined contribution plan. Employers are not permitted to contribute to the account, and amounts may be withdrawn at any time penalty free with no certification requirements for the participant. Employers may elect to automatically enroll plan participants up to three percent of compensation. Highly compensated employees (HCEs) are not permitted to participate. Both of these emergency savings provisions are optional and are effective in 2024.

SECURE 2.0 includes a provision allowing for plans to offer matching contributions on qualified student loan repayments. Under the new law, 401(k), 403(b), and SIMPLE IRA plans will be permitted to allow employees to receive matching contributions to a retirement account based on self-certification of student loan repayment. The employer contribution is treated similar to a regular matching contribution for nondiscrimination testing, and the provision is effective for plan years after December 31, 2023.

Lastly, effective on the date of enactment, plan sponsors are now permitted to allow employees to receive their employer matching or nonelective contributions in their 401(k), 403(b), and governmental 457(b) plans on a Roth basis. Contributions that are received on a Roth basis must be vested in order to qualify.

DOL FINALIZES ESG RULE

On November 22, 2022, DOL released its final rule entitled "Prudence and Loyalty in Selecting Plan Investments and Shareholder Rights," also referred to as the ESG rule. The final rule largely follows the proposed rule that was issued on October 24, 2021, and thus amends DOL's investment duties regulation by modifying the prior final rules issued near the end of the Trump Administration related to environmental, social, and governance (ESG) considerations and proxy voting. The final rule continues the long-standing principle that fiduciaries must act prudently and solely in the interest of participants and may not sacrifice return, or take on additional risk, for collateral goals.

Although the final rule is generally consistent with the proposal, DOL made a number of changes in response to public comments. For example, the proposed rule stated that a fiduciary's consideration of a portfolio's projected return relative to the plan's funding objectives "may often require" an evaluation of ESG factors on the investment or investment course of action and included a detailed list of ESG factors. This language was removed due to concerns that it would put too much weight on ESG factors. Also, in response to comments on the proposed rule, the final rule includes a statement that a plan fiduciary of a participant-directed individual account plan does not violate the duty of loyalty solely because the fiduciary considers participants' preferences in a manner consistent with the requirements of the duty of prudence.

SEC PROPOSES "HARD CLOSE" REQUIREMENT

On November 2, 2022, the SEC released a proposal that would impact participants in 401(k), 403(b), and 457(b) plans who invest in open-end investment companies (mutual funds) by imposing a "hard 4 p.m. close" rule. Mutual funds set their net asset value (NAV) once per day, generally at 4 p.m. If an investor elects to purchase or redeem shares of the mutual fund that day, the investor is generally able to do so at the share price struck at the end of that day. In defined contribution plans, the recordkeeper is able to accept participant trades before that deadline, and then process all the trades overnight, benefitting participants.

Under the SEC proposal, the mutual fund could accept a direction to purchase or redeem the mutual fund at that day's NAV only if the mutual fund receives an eligible order before the 4 p.m. Because it is not possible to instantly send orders from participants through recordkeeping systems to mutual funds, defined contribution plan participants would need to place transactions well before the 4 p.m. deadline to receive that day's NAV.

The idea was previously proposed by the SEC in 2003 but was never adopted, due in large part to concerns about the negative impact on retirement and other individual savers. The primary motivation the SEC expressed for the proposal is to implement a new "swing pricing" proposal. ETFs and CITs would be exempt from the rule. We expect the retirement community to express significant concerns about negative impact on retirement savers to SEC during the rule's comment period.