

The SECURE 1.0 Act Guide

August 2023 Update

An overview of the provisions,
key details, and potential next steps



Using This Guide

At the end of 2019, Congress made significant changes to long-held rules in its effort to expand access to workplace plans and retirement savings, including the Setting Every Community Up for Retirement Enhancement (SECURE 1.0) Act. As the first major retirement law in nearly 13 years, there's a lot to digest.

This Guide, which has been updated through January 2023, focuses on the key provisions relevant to workplace retirement plans. Use the details in this Guide to help prepare for the changes affecting your plan.

Update: On December 29, 2022, President Biden signed into law the SECURE 2.0 Act of 2022 ([SECURE 2.0](#)). This occurred as part of the passage of the Consolidated Appropriations Act, 2023, a federal government spending package. The bipartisan legislation builds on the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE 1.0), retirement legislation signed into law at the end of 2019, and includes reforms that seek to expand retirement coverage and savings. This guide has been updated to include SECURE 2.0 changes and links to the SECURE 2.0 Guide when relevant.

Important Note





In many cases, additional regulatory guidance is required to clarify these changes. Fidelity has been working closely with various industry groups to share our interpretations and questions with regulators while representing the needs of our plan sponsors and participants. Fidelity will provide updates that may impact your plan as regulatory guidance is issued.

Fidelity does not provide legal or tax advice. As always, plan sponsors should discuss any potential plan design changes with their tax advisors and encourage employees to consult their tax advisors on how these changes may impact them.






Understanding the new requirements and your next steps to consider


Plan Design

Topic	Description	Plan Type	Mandatory	Effective Date	Additional Details	What's New as of August 2023
Deadline to amend plan document	<p>Plan amendments generally must be adopted by the last day of the plan year that begins in 2022 (December 31, 2022, for plans with a calendar year-end).</p> <p>For governmental plans and certain collectively bargained plans, amendments must be adopted the last day of the plan year that begins in 2024 (December 31, 2024, for plans with a calendar year-end).</p> <p>Amendments may be retroactive to reflect prior changes to plan operations.</p>	All affected plans listed in this Guide.		Generally, plan years beginning after December 31, 2019	<p>Consult your legal counsel to determine if your plan documents must be amended.</p> <p>If you use one of Fidelity's preapproved 401(a) or 403(b) plan documents, the deadlines are the same, but Fidelity will proactively contact you regarding mandatory changes to your plan document.</p>	The IRS has provided some clarification about deadlines, which are covered in the Frequently Asked Questions section.
Availability of pooled employer plans (PEPs)	Allows two or more unrelated employers to participate in a PEP, which is considered a single plan under the Internal Revenue Code and ERISA.	<p>PEPs are limited to defined contribution or IRA-based plans.</p> <p>Defined benefit plans, 403(b) plans, and governmental 457(b) plans are excluded from the new PEP provisions.</p>		Plan years beginning after December 31, 2020	<p>This change will make it easier for small businesses to band together to offer a retirement savings plan.</p> <p>Fidelity launched its PEP in 2021 in line with SECURE Act provisions going into effect. Fidelity remains initially focused solely on employers with 5–50 employees, who do not have a retirement plan today (zero assets, “start-up” plans). However, we will continue to evaluate how to expand this offering to support plan conversions and existing clients.</p>	No updates
Deadline to adopt a new plan	Permits plan adoption after the close of a taxable year, if adopted before the sponsor's tax return filing deadline (including extensions).	401(a) pension and profit-sharing plans		Plans adopted for taxable years beginning after December 31, 2019	If you are considering adopting a new pension or profit-sharing plan, this provision may provide more time to adopt a plan, to which deductible contributions may be made for a prior taxable year. Consult your tax advisor.	No updates
Ability to add a safe harbor nonelective contribution in mid-year or after plan year-end	<p>A 401(k) or 403(b) plan may be amended to add a safe harbor nonelective contribution of:</p> <ul style="list-style-type: none"> • 3% of participant compensation if the amendment is adopted before the 30th day before the last day of the current plan year, or • 4% of participant compensation if the amendment is adopted before the last day for distributing excess contributions for the plan year. 	<ul style="list-style-type: none"> • 401(k) plans • 403(b) plans <p><i>Plans that provide for certain safe harbor matching contributions are not eligible for this amendment.</i></p>		Plan years beginning after December 31, 2019	Consult your tax advisor to determine whether you may want to take advantage of this opportunity.	No updates

Plan Design (cont.)

Topic	Description	Plan Type	Mandatory	Effective Date	Additional Details	What's New as of August 2023
Small-employer tax credits for adopting a qualified retirement plan, a Simplified Employee Pension (SEP) plan, or a SIMPLE IRA plan	Increases the tax credit available to eligible small employers (with generally up to 100 employees who received compensation of \$5,000 or more for the preceding year) to 50% of the cost to set up and administer a new plan and educate employees about the plan. The tax credit amount is increased to up to \$5,000 for each of the first three years and, if the plan includes automatic enrollment, an additional general business tax credit of up to \$500 per year over a three-year period may be available.	<ul style="list-style-type: none"> • 401(k) plans • 401(a) pension plans • SEP plans • SIMPLE IRA plans 		Taxable years beginning after December 31, 2019	<p>Because each plan and tax situation is different, you should consult your tax advisor for suggestions on how to take advantage of any potential tax credits.</p> <p>Additional guidance was issued that included:</p> <p>\$500 Tax Credit Only one \$500 tax credit per year for a three-year period of their plans that include an eligible automatic contribution arrangement (EACA). An employer may only receive a credit for one three-year period for plan years beginning after December 31, 2019, if the plan includes an EACA. The three-year period begins the first year that the employer's plan includes the EACA for that plan. The credit only applies to that plan and cannot be transferred to another employer plan, other than a spin-off plan. Please consult your tax advisor for further information about this credit.</p>	Review the SECURE 2.0 Guide for additional information.
Distribution of custodial accounts after 403(b) plan termination	Permits in-kind distributions to participants of 403(b)(7) custodial accounts upon plan termination, which is consistent with the ability to distribute 403(b)(1) annuity contracts upon plan termination.	403(b)(7) plans		Retroactively effective for taxable years beginning after December 31, 2008	Contact your Fidelity representative with questions.	No updates
Definition of "eligible employee" for church plans	Clarifies that employees of church-controlled organizations are included in the type of employees who are eligible to participate in retirement income accounts.	403(b)(9) retirement income accounts		Retroactive to 1974	Determine with your legal counsel whether this change affects your plan documents or adds a new group of potentially eligible employees.	No updates

Employee Eligibility and Enrollment

Topic	Description	Plan Type	Mandatory	Effective Date	Additional Details	What's New as of August 2023
<p>Participation by long-term part-time (LTPT) employees in 401(k) plans</p>	<p>Requires eligibility for employees upon the earlier of completion of either one year of service (with at least 1,000 hours of service) or three consecutive years of service with at least 500 hours of service in each 12-month eligibility computation period. These employees may be excluded from receiving any matching and/or nonelective contributions and may also be excluded from nondiscrimination and top-heavy testing.</p>	<p>401(k) plans (other than employees in collectively bargained plans)</p>	<p style="text-align: center;"></p>	<p>Plan years beginning after December 31, 2020, for purposes of counting hours of service under the three-consecutive-years rule</p>	<p>Start reviewing your plan's current eligibility and vesting requirements and tracking capabilities to understand whether any changes are necessary. You will be required to start tracking eligibility and vesting service in 2021.</p> <p>Next, consider whether to offer employer nonelective and/or matching contributions to your long-term part-time employees.</p> <p>Finally, assess whether to include the long-term part-time employees in the plan's nondiscrimination and top-heavy tests.</p> <p>Guidance was issued in 2020, including:</p> <p>Vesting</p> <p>The SECURE 2.0 Act added a provision to exclude service prior to 2021 (other than certain exceptions, if elected, for years of service before age 18 or before the plan was established) for vesting purposes after the LTPT employee becomes eligible to make 401(k) deferral contributions. An LTPT employee who has satisfied the three-consecutive-years rule with at least 500 hours of service for eligibility purposes and is a participant must receive vesting service credit for each 12-month period in which he or she completes 500 hours of service. This requirement continues to apply for every year thereafter even if an employee in a subsequent year satisfies the plan's one year of eligibility service requirement (1,000 hours of service in a 12-month computation period) instead of relying on the long-term part-time requirement to participate in the plan.</p>	<p>In 2022, Fidelity sent educational information to 401(k) plan sponsors subject to the original SECURE 1.0 LTPT provision. Additional communications are planned for 2023.</p> <p>SECURE 2.0 included two changes to the long-term part-time employee provision, one for 401(k) plans immediately effective and another for both 401(k) and 403(b) plans subject to ERISA for 2025 and subsequent plan years.</p> <p>We're anticipating further guidance from the IRS.</p> <p>Review the SECURE 2.0 Guide for additional information.</p>




Employee Eligibility and Enrollment (cont.)

Topic	Description	Plan Type	Mandatory	Effective Date	Additional Details	What's New as of August 2023
Safe harbor notices for 401(k) and 403(b) plans	<p>Eliminates the requirement to distribute the initial and annual safe harbor notice to eligible employees for certain safe harbor nonelective contribution plans.</p> <p>The notice is still required if:</p> <ul style="list-style-type: none"> the safe harbor contribution plan formula is a matching contribution, or the safe harbor contribution plan formula includes a discretionary matching contribution and the employer nonelective contribution is used to help the plan pass the actual contribution percentage nondiscrimination test. 	401(k) and 403(b) plans with a nonelective contribution safe harbor plan design	✗	Plan years beginning after December 31, 2019	<p>If your plan meets the new requirements to eliminate the safe harbor notice, consider whether you want to discontinue distributing the notice to eligible employees.</p> <p>Elimination of the notice applies to both the initial and the annual notice requirements.</p> <p>Plans that include a "springing safe harbor" provision can reasonably take the position that a supplemental notice is not required.</p>	No updates
Automatic enrollment 401(k) and 403(b) plans	Raises the cap for the Qualified Automatic Contribution Arrangement (QACA) salary deferral safe harbor from 10% to 15% of eligible compensation after the participant's initial year.	401(k) and 403(b) automatic enrollment plans with a QACA safe harbor plan design	✗	Plan years beginning after December 31, 2019	If your plan is a QACA 401(k) or 403(b) plan, consider whether you want to increase your highest automatic enrollment salary deferral percentage to 15%.	Review the SECURE 2.0 Guide for additional information.




Distributions and Withdrawals

Topic	Description	Plan Type	Mandatory	Effective Date	Additional Details	What's New as of August 2023
<p>Required minimum distribution (RMD) starting age increased to 72</p> <p><i>Note: also commonly referred to as a minimum required distribution or MRD</i></p>	Increases the age that certain participants must begin receiving RMDs from 70½ to 72.	All retirement plans subject to the minimum distribution requirements	✓	Distributions required to be made after December 31, 2019, for participants who attain age 70½ after December 31, 2019	<p>Fidelity has updated its Automated RMD Service to change the RMD age requirement and account for the 2020 RMD waiver under the CARES Act. All participant communications will be updated in 2021 to reflect the new age requirement.</p> <p>If you send RMD communications directly to your participants, then you need to make the appropriate changes.</p> <p>New guidance was issued, including:</p> <p>The IRS updated their model 402(f) notice to change the RMD age from 70½ to 72.</p> <p>Please refer to the Fidelity CARES Act Guide for further information about the waiver of the 2020 RMDs.</p>	<p>SECURE 2.0 increased the required beginning date from age 72 to 73 for individuals who attain age 72 on or after January 1, 2023, and from age 73 to 75 for individuals who attain age 73 on or after January 1, 2033.</p> <p>Review the SECURE 2.0 Guide for additional information.</p>




Distributions and Withdrawals (cont.)

Topic	Description	Plan Type	Mandatory	Effective Date	Additional Details	What's New as of August 2023
Changes to post-death required distribution period for certain beneficiaries	Requires certain beneficiaries to receive their account balances based on new distribution timing requirements, which significantly modified the "stretch" distribution provisions.	All defined contribution retirement plans subject to the minimum distribution requirements <i>Note: 457(b) plans sponsored by tax-exempt organizations are not included.</i>		Distributions made to beneficiaries of deceased participants who die after December 31, 2019 (or after December 31, 2021, for participants in governmental plans) For collectively bargained plans, the effective date depends on the termination date of the collectively bargained agreement, but not later than distributions made to beneficiaries of deceased participants who die after December 31, 2021.	You may need to update your internal procedures so that you can identify beneficiaries based on the date of death of the participant. Note that the rules for governmental and multi-employer plans may vary. As a general matter, you should encourage beneficiaries to consult their tax advisors on these new requirements, which are very complex. Fidelity is currently working to update beneficiary-related communications to address the SECURE Act changes. We have been working with industry groups to provide comments to the Treasury and IRS to help them develop future guidance.	In 2022 (Feb. 24, 2022), the IRS proposed rules for death benefit distributions to one or more of the beneficiaries in a DC plan. For more information, refer to the RMD Guide. Review the SECURE 2.0 Guide for additional information. We're anticipating further guidance from the IRS.
Qualified birth or adoption distributions (QBOAD)	Provides that qualified birth or adoption distributions of up to \$5,000 from employer plans and IRAs are not subject to the 10% early withdrawal penalty (if applicable). The distribution must be made within one year of the birth of the child or the finalization of the adoption. The individual may repay a qualified birth or adoption distribution as a rollover contribution to the retirement plan from which the QBOAD was originally taken or to an IRA.	<ul style="list-style-type: none"> • 401(a) defined contribution plans • 401(k) plans • 403(b) plans • 457(b) plans sponsored by governmental entities 		Distributions made after December 31, 2019	Fidelity has added QBOAD as an option for plans to consider offering. The withdrawal is processed via phone representative and the participant must self-certify they meet the eligibility requirements. You may want to begin thinking about adding this new distribution option. For information on timing and availability for adding this optional feature, contact your Fidelity service team.	Fidelity is evaluating what the long-term digital solution will be for QBOAD. See the Frequently Asked Questions section for more information. SECURE 2.0 added a provision that any repayment of a QBOAD must be completed within three years of the date of the distribution. Review the SECURE 2.0 Guide for additional information.
In-service distributions permissible at age 59½	Permits in-service distributions at age 59½, lowered from age 62 for pension plans and age 70½ for governmental 457(b) plans.	<ul style="list-style-type: none"> • 401(a) money purchase pension plans • 401(a) defined benefit plans • 457(b) plans sponsored by governmental entities 		Plan years beginning after December 31, 2019	Consider whether you want to reduce the age under your plan for in-service distributions to participants. For information about adding a new distribution option or changing an existing one, please contact your Fidelity service team.	No updates

Investment Options

Topic	Description	Plan Type	Mandatory	Effective Date	Additional Details	What's New as of August 2023
Lifetime income disclosures	Requires benefit statements to include an annual estimate of the monthly payments the participant would receive after retirement based on his or her current account balance, using required assumptions.	ERISA-covered defined contribution plans		Statements issued more than 12 months after Department of Labor (DOL) issues interim final rules, model disclosures, and assumptions.	The DOL has issued interim final rules, model disclosures, and assumptions. Review the latest information on PSW® and in the FAQs section of this Guide. The DOL issued clarification on the effective date on July 26, 2021.	No updates
Portability of lifetime income investments (annuities and other investments that offer a lifetime income feature)	Permits participants to take a distribution of a lifetime income investment without regard to restrictions on withdrawals, if the lifetime income investment is no longer authorized to be held as a plan investment option. The distribution may be made in the form of a rollover distribution or qualified plan distribution annuity contract.	<ul style="list-style-type: none"> • 401(a) defined contribution plans • 401(k) plans • 403(b) plans • 457(b) plans sponsored by governmental entities 		Plan years beginning after December 31, 2019	If you are considering removing this type of investment from your plan lineup, in addition to consulting your Fidelity service team, please also consult the investment provider (typically the insurance carrier) to determine whether portability is possible for the investment. As this is a new type of distribution, there will be additional operational and communication considerations.	No updates
Fiduciary safe harbor for selection of an annuity provider	Enables fiduciaries to limit their potential liability associated with selecting an annuity provider, if the insurer becomes unable to satisfy its financial obligations under the annuity contract.	ERISA-covered defined contribution plans		Effective December 20, 2019	If you are selecting an annuity provider for your plan, consider designing your review and selection process to take advantage of the safe harbor.	No updates

Other Provisions

Topic	Description	Plan Type	Mandatory	Effective Date	Additional Details	What's New as of August 2023
Failure to file penalties	<p>Significantly increases the IRS penalties for failures to timely file the plan's annual return on Form 5500; Form 8955-SSA for separated participants with vested deferred benefits; and notices of a plan merger, transfer of assets, or spin-off on Form 5310-A.</p> <p>Also increases the IRS penalties for failure to provide withholding notices (Form W-4P).</p>	Retirement plans subject to the applicable filing and notice requirements		Filings due after December 31, 2019	Make sure your processes to complete filings and agency reporting are working well to avoid any penalties.	No updates
Treatment of difficulty of care payments excluded from income as compensation	Permits treatment of certain qualified foster care payments, which are excluded from income as difficulty of care payments, to be treated as compensation or earned income for IRA and defined contribution plan purposes. Thus, a participant may make contributions to, or receive allocations under, the plan for difficulty of care payments. Participant contributions to retirement plans allocable to such payments are treated as after-tax contributions.	All defined contribution plans		Retroactively effective for plan years beginning after December 31, 2015	<p>Limited applicability for most plans; however, you may want to review your employee compensation to identify any employees receiving difficulty of care payments (such payments are often received by home health care workers) in preparation for potential further IRS guidance on this section.</p> <p>New guidance was issued, including:</p> <ul style="list-style-type: none"> • Difficulty of care payments received by an employee from a person other than his or her employer are not compensation to the employee under the employer's plan. • A plan document does not have to be amended for a difficulty of care payment if the employer does not make those payments to its employees. 	No updates
Combined Form 5500 filings for groups of defined contribution individual account plans, including open MEPs	<p>Permits members of a group of plans with the same trustee, named fiduciary, plan administrator, plan year, and investment options to file a single aggregated annual report on Form 5500.</p> <p>Plans not subject to ERISA may be included in the filing.</p>	ERISA-covered defined contribution plans subject to Form 5500 filing requirements		Returns and reports for plan years beginning after December 31, 2021	<p>After guidance is issued by the DOL and IRS, consult your tax advisor as to whether a combined filing is appropriate for your plans.</p> <p>On September 15, 2021, the IRS, PBGC, and DOL issued proposed guidance with changes to Form 5500 reporting requirements. A new Schedule DCG was proposed that would need to be completed by each plan in a DCG arrangement.</p>	No updates

Frequently Asked Questions



Plan Design

Q: How does the SECURE 1.0 Act affect the deadlines for plan amendments?

A: Mandatory amendments must be applied retroactively to the effective date of the SECURE Act provision or the regulation thereunder. Discretionary amendments must be applied retroactively to the effective date specified by the plan. A plan must operate as if the amendment was in effect during the period between the effective date of the amendment's provision and the deadlines described below or, if earlier, the date the amendment is adopted. Plan sponsors of plans that are in the process of being terminated must amend their plan document before the applicable deadline. Please refer to [The CARES Act Guide](#) for information about the amendment deadlines for CARES Act changes.

The deadlines provided below are general guidelines for SECURE 1.0 Act changes. Please review them with your legal counsel and confirm the deadline that applies to your specific plan type due to changes to the plan.

For plan sponsors using Fidelity's IRS pre-approved plan documents, we will prepare amendments to reflect the SECURE 1.0 Act changes. Timing is yet to be determined, but Fidelity will communicate with you once those steps are ready to begin.

401(a) and 401(k) Plans

The deadline is generally the last day of the first plan year beginning on or after January 1, 2025. In general, for 401(a) and 401(k) plans that are governmental plans or applicable collectively bargained plans, the deadline is the last day of the first plan year beginning on or after January 1, 2027. Amendments can be made after the relevant deadline but will not be entitled to the anti-cutback relief provided by Internal Revenue Code section 411(d)(6) and ERISA section 204(g), if applicable.

403(b) Plans and 457(b) Governmental Plans

For nongovernmental plans, the deadline is generally the last day of the first plan year beginning on or after January 1, 2025. For 403(b) plans that are governmental plans, the deadline is the last day of the first plan year beginning on or after January 1, 2027. Amendments can be made after the relevant deadline but will not be entitled to the anti-cutback relief provided by ERISA section 204(g), if applicable.

Q: I'm considering adopting a pension or profit-sharing plan. How does the SECURE 1.0 Act impact that decision?

A: The SECURE Act has extended the deadline to adopt certain types of new plans. An employer may now adopt a pension or profit-sharing plan after the close of a taxable year and elect to treat the plan as having been adopted as of the last day of the prior taxable year, provided that the plan is adopted before the employer's tax-filing due date (including extensions) for the prior taxable year. However, this provision cannot be used to retroactively create a 401(k) plan or a 401(k) feature in a profit-sharing plan.

This new rule applies to plans adopted for taxable years beginning after December 31, 2019. If you would like to adopt a new plan after the close of a plan year, please discuss it with your tax advisor. If you are considering one of Fidelity's preapproved plan documents, please contact your Fidelity service team.

Q: Will you work with advisors as a distribution channel for PEPs?

A: Fidelity Advantage 401(k) will only be available to employers who do not have a retirement plan today (zero assets/"start-up" plans). Historically, this has been a space where our advisor partners have not been focused, and therefore we decided to simplify our offering and not partner with any providers on our MVP. We want to work with advisors; however, Fidelity Advantage 401(k) currently cannot support plan conversions and cannot accommodate an advisor acting in an ERISA 3(38) or 3(21) capacity. These are future functionalities that we will explore building. Fidelity is committed to providing the best customer experience for both our plan sponsor and advisor clients. We are continuing to develop solutions in a way that will help plan sponsors offer a retirement plan that enables their employees to achieve better outcomes while improving their ability to reach their long-term financial goals. We are equally committed to helping our advisor clients grow and to retaining clients and revenue so that they can continue to help our mutual clients meet their retirement plan objectives. This will not change.

Q: Will my plan be eligible for a tax credit under the Small Employer Tax Credit provision?

A: "Small employers" are defined as having generally up to 100 employees. Plan sponsors should consult their tax advisor in order to determine specific eligibility.

Employee Eligibility and Enrollment

Q: Does the new long-term part-time deferral rule apply only to 401(k) plans? Are other plan types exempt?

A: The rule under SECURE 1.0 applies to all 401(k) plans other than collectively bargained plans. It does not apply to non-401(k) plans, such as 403(b) and 457 governmental plans. SECURE 2.0 expands affected plans to both 401(k) and 403(b) plans subject to ERISA for 2025 and subsequent plan years. Please review the [SECURE 2.0 Guide](#) for more information.

Q: We have multiple long-term part-time employees who have met or will meet the new "500 hours over three consecutive years" rule. When do we need to start tracking hours for long-term part-time participants? How far back are hours of service calculated? Are hours of service calculated on a 12-month plan year or employee anniversary year eligibility computation period?

A: The new rules are complicated and have triggered many questions and affect both eligibility and vesting requirements.

SECURE 2.0 modifies the three consecutive years rule to two consecutive years starting with 2023 plan years, which will first affect employees who are eligible under the two-year rule in 2025. Please review the [SECURE 2.0 Guide](#) for more information.

The following information reflects the three-year rule that remains in effect and will result in newly eligible participants starting in 2024.

The changes require that employees who complete at least 500 hours of service in each 12-month eligibility computation period over three consecutive years of service be eligible to participate in the salary deferral portion of the plan. This provision goes into effect for plan years beginning on or after January 1, 2021. Plan sponsors should start tracking employee hours of service beginning in 2021, but 2024 will be the first year that employees under this new provision will be eligible to participate in the 401(k) plan. Also, a plan sponsor may still maintain a minimum age eligibility requirement.

An employee who satisfies the long-term part-time employee eligibility, age, and entry date requirements must receive vesting credit for all years of service that he or she completes at least 500 hours of service during the vesting computation period, with hours for computation periods before 2021 being excluded.

Please review your internal procedures in order to begin tracking hours in 2021 to meet the requirements of this provision. Fidelity continues to evaluate the effect on our Eligibility Tracking service and will provide more information to plan sponsors as soon as it is available.

Q: Does eligibility under the long-term part-time provision extend to both employee and employer contributions?

A: No, this provision only requires that employees be eligible to make deferral contributions to the 401(k) plan. However, a plan sponsor can choose to offer employer nonelective and/or matching contributions to these participants.

Q: Are long-term part-time participants required to be included in nondiscrimination and top-heavy testing?

A: It's up to each plan sponsor to determine if they would like to include or exclude these employees in their nondiscrimination and top-heavy testing.

Q: What should I do now to start administering the new eligibility and vesting provisions for long-term part-time employees?

A: You need to start tracking the hours of service for your long-term part-time employees. Fidelity will automate our systems for the changes to the eligibility and vesting requirements, but we are awaiting further regulatory guidance. We will provide you with further information after it becomes available.

Q: Are long-term part-time employees required to be considered "eligible participants" for determining audit thresholds and filing Schedule I or H?

A: Form 5500 (the Annual Return/Report of Employee Benefit Plan) is required to be filed annually. An audit is generally required if the plan covers 100 or more participants as of the beginning of the plan year. An employee who meets the plan's age, service, and entry date requirements and is not part of an excluded class of employees would be eligible to participate in the plan. Thus, it seems that an eligible employee who meets all the requirements would be an eligible participant for purposes of the 100-participant threshold, even if the participant is only eligible to make deferral contributions to the 401(k) plan. We are anticipating additional guidance from the IRS and DOL that will address this question and provide the official answer.

Q: Can you clarify the changes to the deadline to amend a plan document for an employer nonelective contribution safe harbor plan design? How can Fidelity help plan sponsors take advantage of the changes?

A: 401(k) and 403(b) plans that are not using a matching contribution safe harbor may be amended as late as 30 days before the end of a plan year to include a 3% of participant compensation employer nonelective safe harbor contribution for the current plan year. 401(k) and 403(b) plans may be amended as late as the end of the following plan year to add a 4% of participant compensation employer nonelective safe harbor contribution, which may help the plan pass nondiscrimination tests. If you'd like to make any changes to your plan's employer nonelective safe harbor contribution status, contact your Fidelity service team.

Q: How can Fidelity help plan sponsors that want to increase the Qualified Automatic Contribution Arrangement (QACA) salary deferral rate cap?

A: If you'd like to increase your plan's deferral rate cap up from 10% to the new 15% maximum, contact your Fidelity service team.

Distributions and Withdrawals

Q: How does the law change the RMD age requirement?

A: Individuals must begin receiving required minimum distributions (RMDs) at age 72 if they attain age 70½ after December 31, 2019. The requirements have not changed for individuals who reached age 70½ before January 1, 2020, who continue to be subject to the age 70½ requirement to begin RMDs. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) waived the RMD requirement for affected participants who were required to receive distributions in the 2020 tax year unless the plan required the distribution. However, participants who were age 70½ before January 1, 2020, and delayed their initial 2019 RMDs until April 1, 2020, received their distributions since the CARES Act was enacted on March 27, 2020, and Fidelity had already processed them. Please refer to the [Impact of the CARES Act on 2020 Required Minimum Distributions](#) for further information.

SECURE 2.0 increased the required beginning date from age 72 to 73 for individuals who attain age 72 on or after January 1, 2023, and from age 73 to 75 for individuals who attain age 73 on or after January 1, 2033. Please review the [SECURE 2.0 Guide](#) for more information.

Q: Has Fidelity made updates to comply with the new age 72 RMD requirement?

A: Yes, changes have been made to automated RMD calculations for participants who have reached or will reach age 70½ on or after January 1, 2020, to comply with the new age requirement.

SECURE 2.0 increased the required beginning date from age 72 to 73 for individuals who attain age 72 on or after January 1, 2023. Changes are in process, with some already completed, to comply with this change. Please review the [SECURE 2.0 Guide](#) for more information.

Q: Which beneficiaries are affected by the changes to the RMD rules?

A: Beneficiaries of participants who died after December 31, 2019, are required to follow the new RMD rules. If you sponsor a governmental plan, please note that the new rules apply to beneficiaries of deceased participants who die after December 31, 2021. For collectively bargained plans, the effective date depends on the termination date of the collectively bargained agreement, but not later than distributions made to beneficiaries of deceased participants who die after December 31, 2021. This difference is generally not reported in the popular press and may cause confusion for beneficiaries.

Beneficiaries of participants who died prior to January 1, 2020, continue to be subject to the prior RMD rules for beneficiaries.

Q: How did the RMD rules for beneficiaries change?

A: There are now rules for (1) “eligible designated beneficiaries,” a category that includes surviving spouses, minor children, disabled beneficiaries, chronically ill beneficiaries, and beneficiaries not more than 10 years younger than the employee, and (2) other types of beneficiaries. In general:

- Individuals who are eligible designated beneficiaries may receive their distributions over their lifetime. Once a minor child reaches the age of majority, he or she must receive the remainder of their account balance within 10 years of that date.
- If the surviving spouse is the eligible designated beneficiary, he or she can delay the initial distribution until the year in which the deceased participant would have reached age 72 or age 73 under SECURE 2.0..
- Individuals who are not eligible designated beneficiaries must receive a full distribution within 10 years.
- Estates and charities must receive a full distribution within five years.

The CARES Act waived the RMD requirements for affected beneficiaries who were required to receive distributions in the 2020 tax year unless the plan required the distribution. Please refer to the [Impact of the CARES Act on 2020 Minimum Required Distributions](#) for further information.

We anticipate that the IRS will issue regulations. We will incorporate any required changes in our beneficiary services, participant communications, and internal procedures.

Q: How will the qualified birth or adoption distribution (QBOAD) be administered?

A: The QBOAD provision is optional. Each parent may receive a QBOAD from all eligible retirement plans and IRAs of up to \$5,000 per child. The guidance defines an “eligible adoptee” as any individual who is under age 18 or physically or mentally incapable of self-support. The child of a taxpayer’s spouse cannot be an eligible adoptee. The name, age, and taxpayer identification number of the child or adoptee must be included on the tax return for the taxable year that the distribution is made to qualify as a QBOAD.

A plan administrator may rely on the participant’s representation that he or she is eligible for a QBOAD, unless the plan administrator has actual knowledge to the contrary. The plan sponsor may specify the contribution sources that are available for a QBOAD, including deferral, qualified nonelective, qualified matching, safe harbor, and employer contributions (other than money purchase pension contributions for participants who are not available for in-service withdrawal).

A QBOAD is not an eligible rollover distribution (the taxable portion is not subject to 20% federal income tax withholding) and the plan administrator does not have to provide a special tax notice (402(f) notice) to the participant. The 10% early withdrawal penalty will not apply to a distribution (in-service or after severance from employment) to an eligible individual even if the plan does not offer a QBOAD.

An eligible plan must accept a recontribution if:

- the plan permits QBOADs,
- the QBOAD was from that plan, and
- the participant is eligible to make a rollover contribution (up to the entire amount) to that plan at the time of the recontribution.

A recontribution is treated as an eligible rollover distribution that is received by an eligible retirement plan as a direct trustee-to-trustee transfer within 60 days of the distribution.

Q: Is a QBOAD tax-free?

A: A QBOAD is exempt from the 10% early withdrawal penalty but is subject to taxation based on the contribution sources from which it was obtained (e.g., pretax vs. after-tax).

Q: Is a QBOAD a new hardship reason?

A: No. The SECURE Act amended IRC section 72(t)(2) and added it as a new distribution that is exempt from the 10% early withdrawal penalty. The Treasury Department has not changed the list of hardship reasons to include expenses associated with a birth or an adoption.

Investment Options

Q: What are the allowable distributions of lifetime income investments under the new lifetime income portability rules?

A: Allowable distributions include direct rollovers to an IRA or another retirement plan and qualified plan distribution annuity contracts. Fidelity is reviewing this provision to determine what changes to our processes, procedures, and systems may be required to support this new type of distribution.

Q: Did the SECURE Act approve the use of in-plan annuities?

A: No. The SECURE Act provides a new safe harbor intended to clarify plan sponsor requirements for evaluating the financial stability of annuity providers.

Financial stability of an insurance provider, or the provider’s ability to make future guaranteed income payments, is an important consideration for plan sponsors evaluating whether to offer annuities, either in plan or out of plan, to their defined contribution plan participants. In addition, plan sponsors should consider the cost of alternative products and suitability of solutions relative to their participants’ needs.



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