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SECURE 2.0 Technical Corrections

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On December 6, the House Ways and Means, House Education and the Workforce, Senate Finance, Senate Health, Education, Labor and Pension committees released a discussion draft of technical corrections and other clarifications for the SECURE 2.0 Act of 2022 ("SECURE 2.0"). These technical corrections are consistent with the letter that the Chairman and Ranking Members of the House Ways and Means and the Senate Finance committees sent the Treasury Department and the IRS on May 23, 2023, which indicated that the committees would introduce technical corrections legislation to carry out congressional intent of the SECURE 2.0.
We have included a summary of a few of these technical corrections below:

Catch-up Contributions
A very significant SECURE 2.0 provision is a requirement that catch-up contributions for high wage earners can only be made on a Roth (after-tax) basis. However, some commentators questioned whether catch-up contributions would continue be available starting in the 2024 calendar plan year because of an inadvertent drafting error in SECURE 2.0. This past summer, the Treasury Department and the IRS released Notice 2023-63, which confirmed their position that catch-up contributions would remain available on a Roth and non-Roth basis after SECURE 2.0 even without a technical correction and delayed the application of this provision until the first taxable year beginning after December 31, 2025. (See our blog post for more background on the IRS Notice). That said, the draft technical corrections bill would correct the drafting error to ensure that catch-up contributions remain available after SECURE 2.0.
The Roth catch-up requirement applies only to high wage earners, based on wages taken into account for FICA purposes. Notice 2023-63 recognized that partners and other self-employed individuals who do not receive "wages" may not be subject to these requirements. The draft technical corrections bill would not change this result.

Required Minimum Distributions ("RMDs")
SECURE 2.0 increased the RMD age from 72 to age 73 for participants who turn 72 after December 31, 2022 and to 75 for participants who turn 73 after December 31, 2032. (See our blog post for more background on the change). The original text of SECURE 2.0 had an inconsistency for participants who were born in 1959 that created an RMD age of both 73 and 75 for those participants. **The draft technical corrections bill clarifies that the RMD age for participants born in 1959 will be 73**, consistent with the congressional intent outlined in the May letter to the Treasury Department and IRS. **The RMD age for participants born in 1960 or later will be 75.**

Matching Contributions for Student Loan Payments

For plan years after December 31, 2023, SECURE 2.0 added a provision that certain qualified retirement plans can add an employer-matching contribution if an employee repays a qualified education loan incurred by the employee for higher education expenses. This provision can allow employees who prioritize student loan repayment obligations over elective deferrals to avoid missing out on matching contributions that they would have received if they had made elective deferrals.

This matching contribution can only apply to qualifying student loan payments (with any elective deferrals) that do not exceed the 402(g) elective deferral limit. The draft technical corrections bill clarifies that qualifying student loan payments (with any elective deferrals) may not exceed the 402(g) elective deferral limit after application of any catch-up contributions available to participants. The draft technical corrections bill also clarifies that employees must certify annually that it made a student loan contribution to receive a SIMPLE IRA matching contribution, which would mirror the annual certification that employees need to make for 401(k) and 403(b) plans.