The Peninsula Center
for Estate and Lifelong Planning
Attorneys and Counselors at Law

461 McLAWS CIRCLE, SUITE 2
WILLIAMSBURG, VIRGINIA 23185
Telephone: (757) 969-1900
Facsimile: (757) 969-1903
www.tpcestate.com

SECURE 2.0
What is it and How Does It Apply to Me

As you know, Congress passed the Setting Every Community Up for Retirement Enhancement ("SECURE") Act in late 2019, which made significant adjustments to our nation's retirement system. In February of 2022, the IRS issued proposed regulations to implement the new law. Final regulations have not yet been issued, but we have been promised they are forthcoming "soon." Nonetheless, we do have a good sense of what the final regs will look like. But just as we begin to think we have a good understanding of the rules, Congress throws something new our way.

What is commonly known as SECURE 2.0 was signed into law on December 29, 2022. The new law contains 92 provisions that build on and expand the rules created under the SECURE Act of 2019. Most of the provisions of both SECURE and SECURE 2.0 deal with providing more opportunities for employees to save for retirement, as well as incentives for both employees and employers to encourage individual retirement savings. From an estate planning perspective, however, there are a few provisions that are worth mentioning. Some of these were addressed in the SECURE Act while others are new. What follows is just a brief overview of some of the more interesting changes.

- Increase in the Starting Age for Required Minimum Distributions (RMDs): The SECURE Act increased the age for RMDs from 70½ to 72. SECURE 2.0 further increases the age to 73 for those who attain age 72 by the end of 2022. However, there is no change for individuals who are already drawing under the old 70½ or 72 RMD rules. The age will increase again in 2033 to age 75.

- Reduction of the Penalty for Failure to Take RMDs: Previously, the penalty for failing to take a required minimum distribution was 50% of the RMD amount not taken. Under SECURE 2.0, the penalty is reduced to 25%, and if the failure is promptly corrected, the penalty is further reduced to 10%.

- Exceptions to the Early Distribution Penalty: Normally, account owners are penalized for taking distributions from a qualified retirement account prior to age 59½. The penalty is 10% of the amount withdrawn. SECURE 2.0 allows early distributions to be taken without penalty for certain "emergency expenses." The category of individuals qualifying for emergency expenses includes terminally ill individuals, victims of domestic assault, public safety employees and private sector firefighters. In addition, withdrawals made as the result of a federally declared disaster which are made within 6 months of the disaster and involve the individual's principal residence are also exempted. Finally, the law allows distributions of up to $1,000 per year from a retirement plan to cover any unforeseeable or immediate financial needs resulting from a family emergency. Withdrawals in subsequent years may only be taken if the prior distributions have essentially been repaid in full.

- Catch-Up Contributions: Under current law, individuals over age 50 may make increased contributions to their employer-sponsored plans. This amount is in addition to the maximum amount permitted to those under age 50 (currently $22,500), raising the total limit for those age 50 and over to $30,000 for 2023. This amount is indexed for inflation. In addition, beginning in 2025, individuals age 60-63 may make additional contributions equal to 50% of the over-50 catch-up amount. However, beginning in 2024, if an individual earns more than $145,000 per year (indexed for inflation), the catch-up contribution must be made with after-tax dollars, such as to a Roth.

- Increase in the Qualified Charitable Distribution (QCD) Amount: Under current law, individuals may direct up to $100,000 of their RMD to charity. SECURE 2.0 provides this amount will be indexed for inflation for tax years after 2023. Additionally, beginning in 2023, individuals may elect to make a one-time gift of up to $50,000 of their QCD (also adjusted annually for inflation) to a charitable remainder trust or a charitable gift annuity. Neither the charitable remainder trust nor the charitable gift annuity was previously included in the type of charity that could receive a QCD.

- Qualified Longevity Annuity Contracts (CLACs): CLACs are deferred income annuities that are purchased with retirement funds, typically held inside an IRA or 401K, in which payments begin on or before age 85. Previously, the dollar limit for purchases was $145,000, but SECURE 2.0 increases this amount to $200,000 beginning January 1, 2023. In addition, the prior limitation on premiums of 25% of an individual's retirement account balance has been eliminated.

- Distributions from Roth IRAs: Under current law, RMDs are not required to be taken from a Roth IRA during the owner's lifetime. However, RMDs are required for Roth accounts within 401Ks and other types of deferred compensation plans. SECURE 2.0 corrects this discrepancy by exempting in-plan Roth accounts from being subject to RMDs during the lifetime of the plan participant. This change is not effective until 2024.

- Rollovers from 529 Plans to Roth IRAs: The new rules permit funds remaining in a 529 education account to be converted to a Roth IRA for that child or grandchild. There are some restrictions, however. For example, the 529 account must have been in existence for at least 15 years and the rollover is limited to $35,000.

- Increase in Age Requirement for Qualified ABLE Accounts: ABLE accounts are established for certain disabled individuals who experienced the onset of a disability prior to age 26. SECURE 2.0 raises the age of onset to 46; this increase begins in 2026. ABLE accounts can be used to supplement retirement savings for disabled individuals without age restrictions on withdrawals.

From the Government's perspective, the focus of the SECURE Act was to make saving for retirement easier, as well as to simplify the overall administration of our retirement system. From an estate planning perspective, however, we lost many planning opportunities in dealing with qualified retirement plan assets. SECURE 2.0 adds some additional options and opportunities for us to consider.

This publication is intended to be a brief overview of some of the changes made by SECURE 2.0 which are relevant from an estate planning perspective. There are qualifications and exceptions to many of these opportunities which are not addressed here. Please consult with your CPA or a qualified estate planning or tax attorney before taking any action. As always, if we can help in any way, please let us know.