BEAR'S TOP 10 THEMES FROM THE SECURE ACT 2.0

Plus: A Peek into a Possible SECURE Act 3.0; Bear's Wish List for D.C. Plans; and Commentary on the Uncertainty of the Traditional vs. Roth Decision

A PRESENTATION TO THE

FINANCIAL PLANNING ASSOCIATION OF MIDDLE TENNESSEE

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OVERVIEW

The SECURE ACT 2.0 OF 2022 ("Setting Every Community Up for Retirement Enhancement (Secure) 2.0 Act"), adopted as part of an omnibus spending bill (the "Consolidated Appropriations Act of 2023"), was signed into law on December 29, 2022. From expanding coverage to simplifying plan rules, the objectives of the SECURE ACT 2.0 including making it more attractive for employers to offer retirement plans and improving retirement outcomes for employees.

Within the SECURE ACT 2.0 are ninety-one different changes to tax law affecting retirement plans or individual retirement planning. While no single provision has the impact as was seen in SECURE ACT 1.0 with the elimination of stretch IRAs, many provisions will have an impact on *some* clients.

This outline does not cover all of these changes. Accordingly, we chose to concentrate on the Act's key provisions that affect retirement planning for individuals, with an emphasis on how financial planning recommendations may be influenced as the Act is implemented over time. However, a summary of the major changes affecting qualified retirement plans (QRPs), SIMPLE IRAs, and SEP IRAs is also included.

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THANK YOU!

BEAR'S TOP 10 THEMES FROM THE SECURE ACT 2.0

Plus … SECURE 3.0 Predictions and "Bear's Wish List"

SECURE ACT 2.0: MORE CHANGES TO RMDs

1. SECURE ACT 2.0 FURTHER EXTENDS THE AGE FOR RMDs

1.1. Effective Jan. 1, 2023: RMDs start in the year in which the plan participant or traditional IRA owner turns age 73

1.2. Effective Jan. 1, 2033, the starting age for RMDs increases to age 75

1.3. Chart by ages:

Birth Year	Age at Which RMDs Begin
1950 or earlier	72 (remains 70½ for those who turned70 ½ prior to 2020)
1951-1959*	73
1960 or later	75

(* A drafting error in the text of the legislation requires a technical correction, to clarify that those born in 1959 don't begin their RMDs at age 74.)

1.4. **First RMD may be delayed still.** Taxpayers still have until not later than April 1st of the year after their "required beginning date" to take their first RMD. Playing around with this might be helpful to some taxpayers, such as being pushed into higher income tax brackets, avoiding for another year higher Medicare Part B and D premiums, and (for lower-income taxpayers) avoiding (or minimizing) the taxation of social security retirement benefits.

1.5. **Potential Benefits of Later Age for RMDs:**

1.5.1. Longer time for tax deferral

1.5.2. Some retirees may delay receipt of income another year (or 3 years, for those born 1960 and later) to not be subject to higher Medicare Part B and D premiums

1.5.3. More time to do tax-efficient conversions to Roth accounts (when retired, possessing lower income, and not in need of QRP / IRA distributions for necessary annual spending)

1.6. **But*:* larger RMDs in later years may result in higher marginal tax rates and/or higher Medicare Part B and D premiums in those later years.**

1.6.1. For low-income retirees, may also affect taxation of social security retirement benefits

1.6.2. For most individuals, putting off RMDs until later years does not help them, and for some it may hurt (*absent good financial planning*).

1.7. **The age at which the more than 5% ownership-of-a-company test for the "still working" exception to RMD requirements also changes** to the ages set forth above.

1.7.1. Plan must permit the later "upon retirement" start date.

1.7.2. Must then begin RMD in year in which retired.

1.7.3. Only applies to the retirement plan in which the worker is participating (not any other retirement plans not sponsored by the current employer, and not IRAs).

1.8. Age to become eligible for Qualified Charitable Distributions (QCDs) from IRAs is still 70.5 years

1.8.1. This remains a key strategy for some of those clients who are charitably inclined, to keep MAGI low to avoid Medicare Part B and D premiums.

1.8.2. Remember that QCDs now count toward a person's RMD.

1.8.3. The annual QCD limit of $100,000 will now be indexed for inflation.

2. <u>AGGREGATION OF ACCOUNTS FOR RMD PURPOSES (ANNUITY AND NON-ANNUITY INVESTMENTS)</u>

2.1. Effective Dec. 29, 2022, RMDs can be determined by aggregating distributions from both annuity and non-annuity investments.

2.1.1. Prior rules provided that if a participant partially annuitized her or his account, the annuitized portion and the reminder of the account were treated separately under the RMD rules. This could have resulted in a larger RMD amount than if the participant had not partially annuitized her or his account.

2.2. Note: The existing law on non-aggregation of certain accounts still applies:

2.2.1. If you have more than one IRA, you must calculate the RMD for each IRA separately each year. However, you may aggregate your RMD amounts for all your IRAs and withdraw the total from one IRA or a portion from each of your IRAs. You do not have to take a separate RMD from each IRA.

2.2.2. If you have more than one defined contribution plan, you must calculate and satisfy your RMDs separately for each plan and withdraw that amount from that plan.

2.2.2.1. Exception: If you have more than one 403(b) tax-sheltered annuity account, you can total the RMDs and then take them from one (or more) of the tax-sheltered annuities.

2.2.3. Spouses <u>cannot</u> combine all married couple's IRAs or qualified retirement plans (QRPs) and take RMDs from just one spouse's account(s).

3. <u>NO RMDs FROM EMPLOYER-SPONSORED ROTH ACCOUNTS COMMENCING IN 2024</u>

3.1. Commencing in 2024, for Roth 401(k), Roth 403(b) accounts, governmental Roth 457(b) plans, and the Roth component of the Thrift Savings Plan, no RMDs will be required from those accounts.

3.1.1. If RMDs on Roth QRP account had already commenced in 2023, they will no longer be required starting in 2024.

3.1.1.1. If any RMD is due for 2023, and the QRP Roth account owner desires to do a rollover, then the RMD must still be taken before the rollover occurs.

3.1.1.2. RMDs were required previously from Roth QRP plan accounts, prior to 2024 To avoid RMDs required a rollover to a Roth IRA, unless the "still employed" exception applied.

3.1.2. Observation: 88% of 401(k) accounts have a Roth option as of 2021.

3.2. Benefits of this law change:

3.2.1. Positive for consumers – no *need* to rollover to Roth IRA to avoid RMDs on QRP/Roth accounts

3.2.2. Positive for providers of employer-sponsored plans who desire to retain assets (and fees)

3.2.3. *Potential negative for advisers* – removes a strong rationale to do an IRA rollover – which was previously an easy part of the justification to comply with DOL 2020-02 requirements (requiring due diligence on IRA rollovers to ensure the rollover is in the account owner's best interest, and in documenting the rationale for the rollover). Most 401(k) plans do not permit "partial rollovers" for terminated employees.

3.2.3.1. *Observation on another manner to justify IRA rollovers*: Adopt an investment strategy for the plan participant that cannot be duplicated with the investment options available within the QRP. To comply with the prudent investor rule, ensure that the investment strategy possess sound support (from academic research, back-testing, or both).

3.2.3.2. *Many software programs are available for tracking and documenting IRA rollover justifications*. But do they set forth all the potential rationale for your firm? Here's a list of possible reasons to justify a rollover to an IRA account:

Assist You with Investment Strategy Selection, Security Selection, and/or Portfolio Management

Secure access to a wider range of investment options, as a means of seeking higher returns over the long term in asset classes not reflected in the current account, and/or seeking risk reduction through minimization of idiosyncratic (diversifiable) risk in your overall portfolio by combining such asset classes and the securities within those asset classes appropriately

Tracking and oversight of investment portfolio to make sure it aligns with your goals and financial situation, as such may change and evolve over time

Provide tax-efficient investment management of your investment portfolio across different types of accounts, through portfolio design and asset class placement

Seek to minimize risk via proper assessment of your tolerance for risk

Monitoring of the investment portfolio and undertaking a systemic approach to portfolio rebalancing to maintain the portfolio's asset allocation and overall risk exposures close to the desired ranges

Adoption of factor-based investment strategies designed by your financial advisor or otherwise not provided to you via your existing qualified retirement plan or other account, for a portion of your portfolio, that seek to provide you with either a higher return, a lower level of portfolio volatility, or a combination of the foregoing

Adoption of BlackSwan strategy for a portion of the portfolio, as implemented by your financial advisor, to seek to increase the long-term expected returns of your portfolio, and/or to seek to reduce risk exposures in the event of a major market downturn (such as might occur in an extreme economic recession or economic depression)

Design and implementation of an Investment Policy Statement, to document your asset allocation, and to have a plan for market value fluctuations, in order to avoid ad hoc portfolio changes that could lead to worse investment performance

Excluding from retirement accounts specific industries or sectors to which you may possess risk exposures due to employment within those industries or sectors and/or holdings of concentrated stock positions within those industries

Undertake behavioral coaching to counter known behavioral biases every investor possesses and/or to better secure for you a beneficial relationship with "money" and/or your accumulated wealth

Assist you with Retirement Income Planning

Identifying, based upon your needs and desires, when your "financial freedom" may be achieved (i.e., when you can retire from work, should you choose to do so)

Assisting with choice of retirement location, and with transitions into retirement, including assisting with development of new life purposes and means to accomplish those life purposes

Set up and maintain retirement account distributions to you from your portfolio as desired to meet your evolving needs and desires for income

Advising on dynamic withdrawal strategies, in reaction to the ongoing performance of your investment portfolio, as well as any developments as to your goals and health

Advise and undertake appropriate income tax withholding at the time of retirement account distributions

Assist you in seeking to address risks relating to retirement portfolio decumulation planning, such as longevity risk / inflation risks, and sequence of returns risk

Suggesting whether to, and when and how, to annuitize any portion of the portfolio to seek lifetime income protection

Aggregate Required Minimum Distributions (RMDs) from IRA accounts and undertake from the appropriately chosen account

Aggregate Required Minimum Distributions (RMDs) from different 403(b) accounts and undertake from the appropriately chosen account

Undertake portfolio withdrawals by selecting accounts that provide for greater tax-efficient accumulation of wealth over the long term, or its transfer

Ascertain whether distributions after separation from service, after age 55 but before age 59½, from a qualified retirement plan account (n/a to IRAs) may be desired

Whether planning for 72(t) distributions (substantially equal periodic payments) may be desired prior to age 59½, from an IRA account (or accounts)

Assist You with Your General Financial Planning

Undertake financial planning with you that seeks to integrate investment portfolio management with your financial plan decisions in other areas

Identify and seek to modify your cash flows (budget), and/or advising on plans for major expenditures over time to make more sound financial decisions

Identify and implement various risk avoidance or minimization strategies, including use of different types of insurance, and planning for the appropriate types and amounts of insurance over time

Design and/or monitoring of your estate plan, including coordination of your estate plan with accounts with beneficiary designations, seeking an efficient and effective management of your assets in the event of your incapacity and/or transfer or

management of your assets upon the end of your lifetime

Design and/or monitoring of your estate plan as a means of reducing estate taxes, gift taxes, generation-skipping transfer taxes, and/or inheritance taxes

Planning for the future educational expenses of a child, grandchild, or other means, and identifying the most appropriate tax-efficient means to do so while considering potential impact on future financial aid awards

Assist you with identifying and implementing strategies to maximize the utility of your Social Security retirement income

Assist you with the selection of appropriate health care plans (including, at age 65, appropriate Medicare coverages for your situation)

Assist you to analyze and plan for the receipt of pension benefits, and/or undertaking a lump sum distribution, considering other parts of your financial plan, any limits on pension protection existing under PBGC regulations, and any risks and options present

Assist with Tax Reduction Strategies

Ascertain whether any tax planning opportunities exist with employer stock held in the QRP (i.e., "NUA strategy" to be pursued)

Ascertain whether, if client is to work post-age 73 (or 75), whether holding assets in QRP would benefit client as to avoiding or lowering RMDs during the period of work (IRA accounts don't provide this option; also not available if you are 5% or greater owner of the employer)

Ascertain whether Qualified Charitable Distributions, post-age 70½, are desired (can only be taken from traditional IRAs, not QRPs)

Undertake asset location guidance to you, for your investments, to facilitate tax management techniques such as seeking long-term capital gain and qualified dividends treatment as well as securing foreign tax credits or deductions for assets held in taxable accounts, tax loss harvesting in taxable accounts, planning for a stepped-up basis, planning to harvest capital gains to take advantage of lower income tax brackets

Taking additional distributions from tax-deferred accounts to take advantage of lower income tax brackets at opportune times

Adjusting the location of investment assets among types of accounts to reflect any changes in your overall income and tax situation

Ascertain opportunities to reduce income taxes through taking advantage of employee benefits, additional contributions to select types of retirement accounts, claiming other tax deductions or credits

When and if appropriate, discuss with you the potential benefits of conversions to Roth IRA accounts for longer-term tax benefits

Discuss ways to gift or bequeath to charities and/or to individuals from various types of accounts tax-efficiently, such as via gifts of low-basis securities to charities, Qualified Charitable Distributions (post-age 70½), and other techniques

Monitoring prospective and actual changes in tax laws to seek to spot opportunities for tax reduction over time

Additional Guidance from Your Financial Advisor

Support from your financial advisor on understanding the potential impact of macroeconomic changes, and how to better navigate different market cycles

Receiving additional guidance from your financial advisor on discerning and planning for the accomplishment of lifetime financial goals

Possessing a trusted financial advisor

Increasing your confidence levels about your financial decisions

Obtaining an objective analysis of your progress toward financial and life success, and/or achieving greater peace of mind

4. <u>REDUCED EXCISE TAXES FOR FAILURE TO TAKE RMD; NO PENALTY FOR TIMELY CORRECTIVE DISTRIBUTIONS FOR EXCESS IRA CONTRIBUTIONS</u>

4.1. **Effective for 2023, the excise tax rate (penalty) for failure to take an RMD is reduced from 50% to 25%, for both employer-sponsored retirement plans and IRAs.**

4.2. And, for traditional IRAs only (but not for employer-sponsored retirement plans), **the excise tax is reduced to 10% if a corrective distribution is made from the IRA.**

4.2.1. Does the IRS still possess the authority to waive all penalties? (Uncertainty exists here.)

4.3. **Elimination of 10% Penalty on Excess IRA Contributions if Timely Corrective Distribution Made.**

4.3.1. The corrective distribution from the IRA must be made prior to the due date (including extensions) of the IRA owner's federal income tax return for the year of the excess contribution.

4.3.2. This provision is effective on Dec. 29, 2022, for any determination of, or affecting, liability for taxes, interest or penalties that is made on or after Dec. 29, 2022 – and without regard to when the excess contribution or distribution occurred.

4.4. **The SECURE Act 2.0 also significantly expands the ability of plan sponsors (and their TPAs, etc.) to self-correct retirement plan errors,** such as for overpayment errors, contribution errors, and distribution errors (and, starting in 2024, reasonable errors in administering automatic enrollment and escalation provided the corrections are made within 9½ months after the end of the plan year

in which the errors occurred). For a summary of these changes, I refer you to this posting from Morgan Lewis.

5. PURCHASE OF LIFE ANNUITIES FURTHER ENCOURAGED

5.1. *Note: SECURE ACTS 1.0 and 2.0 were largely a "bipartisan" endeavor due to the substantial influence in Washington, D.C. of the insurance industry lobby. Several provisions in each Act were highly favorable to the insurance industry, as they expanded the offering of annuities in QRPs, as well as the features that could be offered. However, many of the provisions desired by the insurance lobby were, in fact, consumer-friendly.*

5.2. **COLAs for Life Annuities.** Effective 2023, the SECURE ACT 2.0 eliminates certain actuarial tests in RMD regulations that operated as barriers to the availability of certain life annuities in qualified plans and IRAs.

5.2.1. Commercial annuities will be allowed with increasing payments of less than 5% per year (*i.e.*, cost-of-living adjustments), and these will now satisfy the RMD rules. The increasing payment must be a "constant percentage" increase at least annually.

5.2.2. In addition, the changes permit a lifetime income annuity with a return of premium at death feature, while still meeting the RMD rules.

5.2.3. Other features permitted by SECURE Act 2.0 for commercial annuities include:

5.2.3.1. Accelerated lump-sum payments of all or a portion of the remaining payments due (using reasonable actuarial assumptions);

5.2.3.2. Acceleration of payments to be received over a following period of 12 months);

5.2.3.3. Payments of certain dividends and distributions; and

5.2.3.4. Accelerated death distributions for the undistributed portion of the amount paid for the annuity.

5.3. **QLACs.** Effective 12/29/2022, the 25% limit and $125,000 limit on the purchase amount (premium) for a Qualified Longevity Annuity Contract (QLAC) is replaced. No percentage limitation exists, and the maximum premium amount is raised to $200,000.

5.3.1. "Free look" periods up to 90 days from the date of purchase are permitted (this part of legislation is retroactive annuity contracts acquired on or after July 14, 2014).

5.3.2. About QLACs, generally.

5.3.2.1. QLACs were first marketed in 2014.

5.3.2.2. Joint life (husband wife) QLACs are available.

5.3.2.3. The "qualified" part of the name means the annuity has met the IRS requirements for special treatment when purchased with retirement account funds. The amount used to purchase the QLAC is not counted when determining a person's RMD amount. Only amounts distributed from the QLAC are taxed, in the year distributions occur.

5.3.2.4. The "longevity" part of the name means that the QLAC owner can put off payments until as late as when you turn age 85, and by doing so the QLAC owner increases the

amount of the payments received each year, thereby better ensuring that the owner does not outlive their money.

5.3.2.5. Those with long expected life expectancies, and who risk running out of money in retirement, may be the best candidates for a QLAC. However, there are those financial advisors who believe the low fixed interest rates on QLACs are not favorable compared to a diversified portfolio. Other financial advisors believe that money for short-term needs is better invested in fixed income accounts, while money set aside for needs 15 or 20 years in the future is better invested in equities, given that there has been no 20-year period (since 1926) in which the overall U.S. publicly traded stock market has returned less than the rate of inflation over such period (disregarding the impact of fees, costs, and taxes).

5.3.3. QLACs cannot be purchased using a Roth account, nor an inherited IRA account.

SECURE ACT 2.0: "ROTHIFICATION" CONTINUES

6. ROTH OPTIONS NOW AVAILABLE FOR SIMPLE IRA AND SEP IRAS.

6.1. Effective 2023: Roth option available in SIMPLE IRAs and SEP IRAs

6.1.1. "Election" must be in a manner approved by IRS; IRS rulemaking required; new 5305 forms likely.

6.1.2. It will then take time for custodians to adopt new 5305 forms to permit this option.

6.1.3. It may then take time for employers to set up procedures to adopt this option and to educate employees.

6.2. Benefits occur to:

6.2.1. Small employers (less than 100 employees), in attracting and retaining lower-wage talent, by being able to make greater matches to pay (see discussion of enhancements to SIMPLE IRA contribution limits, later in this outline), and by being able to provide the Roth option [while avoiding higher expenses that are associated with many 401(k) plans, in comparison to the low costs of most SIMPLE IRA plans].

6.2.2. The employees of such small employers - who often should be making Roth SIMPLE IRA account contributions, rather than traditional SIMPLE IRA account contributions.

6.2.2.1. Previously, SIMPLE IRA participants were able to make Roth conversions after the SIMPLE IRA has been funded (with the first dollars) for at least 2 years. But this required an additional step, and payment of income taxes on the conversion amount.

7. **<u>EMPLOYER CONTRIBUTIONS TO 401(K), 403(B) AND GOVERNMENTAL 457(B) PLANS CAN BE ROTH CONTRIBUTIONS.</u>** Effective in 2023, employer-sponsored retirement plans may (but are not required to) permit plan participants to designate employer matching contributions, as well as employer nonelective contributions, as after-tax Roth contributions

   7.1. Applies to 401(k), 403(b) and governmental 457(b) plans

   7.2. Before this law change, all employer contributions had to be made to "traditional" (tax-deferred) accounts.

   7.3. Roth matching or non-elective contributions made by employers will, of course, result in taxable income to the participant. This will include a requirement for additional tax withholding.

      7.3.1. IRS guidance would be helpful.

      7.3.2. Plan administrators and employers will need time to establish and implement procedures, and to educate employees

   7.4. Employer contributions to Roth qualified retirement accounts will not be subject to FICA taxes, as is the case with employer contributions made to traditional qualified retirement plan accounts.

   7.5. **Kentucky residents:** would be better served with a traditional QRP contribution, followed by an in-plan conversion to a Roth account.

      7.5.1. This reduces the income subject to state income taxation. The contribution amount contributed to the traditional QRP account is not subject to state income tax. Generally, Kentucky does not tax the first $31,110 of distributions (includes rollovers to Roth accounts) for state income tax purposes.

      7.5.2. *Example:* John Doe makes a $5,000 contribution to his traditional 401(k) account, which is match by his employer dollar-for-dollar, for a total $10,000 contributed to the traditional 401(k) account. The 401(k) plan permits in-plan conversions to the Roth 401(k) account. John then converts the full $10,000 to the Roth 401(k) account. The $10,000 converted is not subject to Kentucky state income tax, as it falls within the $31,110 exemption amount. [If John and his employer had made contributions directly to the Roth 401(k) account, then John's income would have increased by $10,000, which would have caused state income tax on that amount - $450 in 2023.]

         7.5.2.1. Kentucky's state income tax rate is 4.5% in 2023.

         7.5.2.2. Kentucky's state income tax rate is likely to fall to 4% in 2024, under a bill sent in early Feb. 2023 to the Governor for his signature. If the Governor does not sign it, the Republican super-majority will vote again on the bill, and it would pass.

      7.5.3. Some other states with state income taxes may exempt part of IRA distributions, thereby permitting a similar "deduct-and-convert" strategy.

8. HIGH WAGE EARNERS REQUIRED TO USE ROTH OPTION FOR CATCH-UP CONTRIBUTIONS

8.1. Under current law, for 2023:

8.1.1. Participants of 401(k), 403(b), governmental 457 plans, and the Thrift Savings Plan, can contribute up to $22,500 to their plans. For workers age 50 and up, an additional catch-up contribution of $7,500 may be made in 2023.

8.1.2. SIMPLE IRA plans have a $15,500 contribution limit. The catch-up limit is $3,000.

8.1.3. IRA accounts have a $6,500 contribution limit. The catch-up contribution limit is $1,000.

8.2. Commencing in 2024, for 401(k), 403(b) and governmental 457 plans:

8.2.1. If annual wages for the employee are up to $145,000, catch-up contributions may be made to either traditional (pre-tax) or Roth accounts.

8.2.2. If annual wages for the employee exceed $145,000, catch-up contributions may be made only to Roth accounts. (This provision was designed to raise current revenue for the government.)

8.2.3. *NOTE: A deletion of prior legislative language, by the SECURE Act 2.0, has the unintended effect of eliminating catch-up contributions to Roth accounts commencing in 2024. This will (highly likely) be fixed by Congress in a technical corrections bill.*

8.3. Commencing in 2024, the annual $1,000 catch-up limit for IRAs is indexed for inflation.

8.4. Commencing in 2025:

8.4.1. If taxpayer is ages 60, 61, 63 or 63 at close of the year, the annual catch-up limit is increased from $7,500 (i.e., the 2023 limit, which is indexed to inflation) to $10,000 (or, if greater, 150% of the 2024 "standard" catch-up contribution annual amount).

8.4.2. But, for SIMPLE plans only, the annual catch-up limit increases from $3,500 (as indexed for inflation) to $5,000 (or, if greater, 150% of the 2025 "standard" QRP catch-up contribution annual amount).

8.4.3. Special indexing rules will be applied by the IRS.

9. 529 EDUCATION ACCOUNT: USE IT TO FUND ROTH IRAS FOR THE BENEFICIARY

9.1. Generally, money taken out of 529 accounts for other than educational costs can be taxed and penalized.

9.2. Now, there is a new exception to this – the account owner can move money from 529 account to Roth IRA – starting in 2024

9.2.1. Maximum $35,000 lifetime limit (no indexing for inflation)

9.2.2. Must be a trustee-to-trustee transfer

9.2.3. Subject to Roth IRA annual contribution limits

9.2.3.1. $6,500 in 2023 ($7,500 catch-up)

9.2.3.2. Cannot duplicate other contributions to traditional or Roth IRAs

9.2.3.2.1. Subtract any other contributions made during the year to traditional or Roth IRAs from the $6,500 annual limit (as inflation-adjusted) (or the catch-up limit)

9.2.3.3. Note: the transfer from 529 to Roth account is **<u>not</u>** subject to the MAGI limits

2023 MAGI limits for deducting contributions to Traditional IRAs		
Tax Filing Status	**MAGI**	**Allowed deduction**
a. Single individuals and heads of household who are **active participants** in a qualified plan/employer plan	$73,000 or less	100%
	$73,000 to $83,000	Partial
	$83,000 or more	None
b. Married couples filing jointly if the spouse who makes the IRA contribution is an active participant	$116,000 or less	100%
	$116,000 to $136,000	Partial
	$136,000 or more	None
c. IRA contributor who is not an active participant and is married to someone who is an active participant,	$218,000 or less	100%
	$218,000 to $228,000	Partial
	$228,000 or more	None
d. a married individual filing a separate return who is an active participant	Less than $10,000	Partial
	$10,000 or more	None

9.2.4. 529 account must be open for 15 years

9.2.5. Any contributions to the 529 plan within the last 5 years (and the earnings on those contributions) are ineligible to be moved to a Roth IRA

9.2.6. The transfer from 529 to Roth account must be *in name of <u>same</u> beneficiary*

9.2.6.1. Use a "Custodial Roth IRA" account. The beneficiary (minor) will assume control at ages 18 or 21, depending upon the state law governing the account.

9.2.7. *Can you change 529 account beneficiary name (to another person, or yourself, for example), for an account already open for 15 years, and then transfer to the new beneficiary's Roth IRA account?*

9.2.7.1. *Answer: Unknown. Expect this to be addressed in IRS proposed rules. The answer is probably "no" – but the legislation is unclear. The result might be ... that the beneficiary of the 529 account may have been required to be the beneficiary for 15 years prior to the transfer to the Roth account. (But other answers are possible, and this issue may require further legislation to provide the answer.)*

9.2.8. *Does the beneficiary need to have earned income that year to do the conversion from the 529 account to the Roth IRA account?*

9.2.8.1. *It <u>appears</u> that the amount of the 529 transfer to a Roth IRA cannot exceed the beneficiary's earned income (salary and wages) that year.*

9.2.8.1.1. *Whether this result was intended by the law is unclear.*

9.3. **Why is this so beneficial?** <u>Compound interest!</u> As Albert Einstein (may have) stated: "Compound interest is the eighth wonder of the world. He who understands it, earns it; he who doesn't, pays it."

9.3.1. ***How much to save for retirement?***

9.3.1.1. $100,000 gross income (2023) likely needed for an "o.k." retirement (but not a great retirement)

9.3.1.2. Average social security retirement benefits of single person in 2023: $1,827/month (maximum benefit of $3,636 at full retirement age in 2023; if wait to claim at age 70 the maximum benefit is $4,559). Average benefits for married couple in 2023 where both receive benefits: $2,972; equals approximately $36,000/year.

- 65% of currently retired workers claimed social security retirement benefits prior to their Full Retirement Age (SSA Annual Statistical Supplement, 2022).
- Around 35% of men and close to 40% of women file for social security retirement benefits at age 62, according to a 2020 survey from the BiPartisan Policy Center.
- While the average age for claiming social security retirement benefits increased from 63.6 in 2008, to 64.7 in 2018, in large part due to increase in the full retirement age.
- A study by the Federal Reserve and Boston University found that although 90% of retirees should wait until age 70 to claim their social security retirement benefits, only about 10% currently do.
- *We need to better educate the public about the benefits of claiming social security retirement benefits later, for most of those who retire before their full retirement age.*

9.3.1.3. Accordingly, $64,000 additional income required (2023 amount) to secure $100,000 total gross income

9.3.1.3.1. If we assume a 3.3% rate of withdrawal, based on $64,000 of income needed (with increases thereafter at the rate of inflation), then approximately $2,200,000 "nest egg" needed in 2023 for that "o.k." retirement (plus average social security retirement benefits for a married couple).

9.3.2. STRATEGY: Open a 529 account immediately after a child is born.

9.3.2.1. Assuming this situation exists today ... a 529 account was opened for a child immediately after the child's birth 15 years ago, and the 529 account has been open for 15 years. Commence transfers today from 529 to Roth IRA. Transfers undertaken at ages 16, 17, 18, 19, 20, and 21 (assuming $6,500 for first 3 years maximum contribution, and $7,000 for subsequent 2 years of contributions, and $1,500 in sixth year, with no further contributions to the Roth IRA account thereafter).

9.3.2.1.1. See paragraph 9.2.8 above, as to the issue of whether the child must possess earned income in order to do the 529-to-Roth transfer.

9.3.2.2. Plan ahead for new parents .... assist a parent setting up a 529 account for a newborn:

Fund with small amount to start the 15-year period running. If possible, the donors immediately fund the account (with extra funds, not likely needed for college) in the amount of $7,300. (If immediate funding is not undertaken, seek to meet the requirements of not transferring funds that were contributed – plus the earnings from those funds – during the past five years.)

Assume 10% growth annually in the account value. Then, the transfers would occur from 529 to Roth IRA commencing at age 16 (assuming the beneficiary has earned income up to the amount of the transfer), in an estimated amount of $8,500 per year (due to

inflation adjustments) until the $35,000 amount (not inflation-adjusted) limit is reached.

Then assume aggressive investments in this Roth IRA account (net of fees and costs) until age 65 (assumed retirement age). At 10% annual growth, then $3,088,769 would be in the account when the beneficiary attains age 65. If we assume a 2.5% average rate of inflation, the inflation-adjusted amount is **$1,046,844**. This strategy funds approximately 48% of the desired amount of the "nest egg" for an "o.k. retirement" – with a substantially reduced income tax burden in retirement, to boot!

At 12% annual growth, then $7,216,795 would be in the account when the beneficiary attains age 65. If we assume a 2.5% average rate of inflation, the inflation-adjusted amount is **$2,492,496**. This strategy funds all of the desired amount of the "nest egg" for an "o.k. retirement" – and likely leads (with other funding of retirement while working) to an "exceptional retirement" for this beneficiary.

9.3.3. STRATEGY: Open a 529 account for yourself if you desire to boost the amount in your Roth accounts.

9.3.3.1. If you are unable to make further contributions to a Roth IRA account, but desire greater funding.

9.3.3.2. Fund with $7,300. Assuming 10% growth, this should be sufficient to move $35,000 from 529 account to Roth IRA account, over several years, after 15 years have passed.

9.3.3.3. (This is an aggressive strategy, neither clearly permitted nor clearly prohibited by the SECURE Act 2.0, and future law or regulation, or an IRS interpretation, may negate it.)

SECURE ACT 2.0: ENCOURAGING ADOPTION AND USE OF QRPs

10. IN ADDITION TO THE FOREGOING, MANY PROVISIONS OF SECURE ACT 2.0 ENCOURAGE THE ADOPTION AND INCREASED EMPLOYEE UTILIZATION OF QUALIFIED RETIREMENT PLANS (QRPs)

10.1. **SMALL EMPLOYER PLANS: START-UP CREDIT FOR ADMINISTRATIVE COSTS.**

10.1.1. For employers with 50 or fewer employees, starting in 2023 the retirement plan start-up credit will now be allowed for up to 100% of plan start-up cost (up from previous 50% limit).

10.1.1.1. The annual maximum credit is $5,000. Credit is for up to three years (a maximum of $15,000).

10.1.2. Employers with 51-100 employees remain subject to SECURE ACT 1.0 tax credit provisions. Generally, the tax credit is for up to 50% of the employer's startup costs, up to the greater of: (A) $500; or (B) the lesser of: (i) $250 multiplied by the number of NHCE's who are eligible to participate in the plan; or (ii) $5,000.

10.1.3. Retroactive to 2020, employers who did not have a retirement plan and who joined an existing multi-employer plan (MEP) are eligible for this credit.

10.2. **SMALL EMPLOYER PLANS: CREDIT FOR EMPLOYER CONTRIBUTION COSTS.**

10.2.1. Employers with up to 100 employees may receive tax credit, up to $1,000 per employee, for employee matching or profit-sharing contributions.

10.2.2. The credit phases down gradually over five (5) years.

10.2.3. The credit is subject to further reductions for employers with 51-100 employees.

10.3. **EXPANSION OF AUTOMATIC ENROLLMENT**. Commencing for employer-sponsored retirement plans which are started in 2025 or later, employees must be automatically enrolled at a 3% (pre-tax) deferral rate, with a required feature that escalates automatically enrolled employees by 1% each year, up to a 10% cap. Employees may opt out of auto-enrollment.

10.3.1. Plans commenced in 2023 or 2024 must possess these features but have until 2025 to implement them. Plans commenced prior to 2023 are not required to possess this feature.

10.3.2. Small businesses with 10 or fewer employees are exempt.

10.3.3. Employers that have been in business for less than 3 years are exempt.

10.3.4. Governmental employers, churches are exempt.

10.3.5. **EACE $500 PER YEAR TAX CREDIT.** For employers with less than 100 employees (defined as employees making more than $5,000 in the preceding year), there continues to be an additional tax credit for adding the "eligible automatic contribution arrangement" (EACA) to the plan. Small employers are eligible for the credit, which is $500 per year, for the first three years in which the EACA feature is maintained.

10.4. **SOLO 401(K)s MAY NOW BE ESTABLISHED UP TO DUE DATE OF THE INDIVIDUAL'S TAX RETURN (WITHOUT EXTENSIONS)**. Effective for plans established in 2023 or later. Applies to both sole proprietorships as well as single-member LLCs that are taxed as sole proprietors.

10.5. **ANOTHER TYPE OF 401(K) PLAN IN 2024**: **"STARTER 401(k)."** Employees may defer up to $6,000 a year (with $1,000 catch-up contributions). Employers not required to contribute. This is intended to thwart the auto-IRA plans put together by several states and preserve private sector involvement.

10.5.1. The fact that the Starter 401(k) has a lower contribution limit than a regular IRA will likely require a legislative fix.

10.6. **SEP IRAS MAY BE ESTABLISHED FOR HOUSEHOLD EMPLOYEES**. Commencing in 2023. Because your nanny, or maid, needs a retirement plan!

10.7. EFFECTIVE 2024, SIMPLE IRAS HAVE MORE OPTIONS FOR ADDED EMPLOYER CONTRIBUTIONS.

10.7.1. For employers with 25 or fewer employees, additional employer contributions are permitted of up to the lesser of: (1) 10% of employee's pay; or (2) $5,000.

10.7.2. For employers with 26-100 employees, employers can increase their matching contributions to 4% (from 3%), or their nonelective contributions to 3% (from 2%).

10.7.3. This is in addition to either:

10.7.3.1. Required employer match; or

10.7.3.2. 2% of pay non-elective employer contribution

10.7.4. *Why did Congress add this complexity?* Imagine being an employer with 23 employers, who in 2024, in celebration of a highly profitable year, chooses to add up to 10% of an employee's pay (up to $5,000 max) as an additional employer's contribution to the SIMPLE IRA account

of employees in 2024. But, in 2025, the number of employees increases to 26. Despite another highly profitable year, the employer can only add 1% to the matching contribution (to 4%, from 3%). The employees are wholly disappointed, and a few depart.

10.7.5. IRS must again modify 5305-SIMPLE and 5305-SEP forms

10.8. **EMPLOYERS MAY TERMINATE AND REPLACE A SIMPLE IRA PLAN WITH A SAFE-HARBOR 401(K) OR 403(B) PLAN** pursuant to specified transition rules, with relief from the 2-year withdrawal limitation otherwise applicable to SIMPLE IRAs.

10.9. **403(b) MEPS.** Multiple Employer Plans (MEPs) now permitted for 403(b)s (starting in 2023).

10.10. **403(b) INVESTMENTS. Collective investment trusts –** by the language in the legislation- could have immediately been added to 403(b) plans.

10.10.1. BUT – in a surprise last minute development, the conforming language to federal securities laws was removed. As a result, **CITs are NOT YET PERMITTED in 403(b)s**. Look for this to resurface in next year's omnibus bill, since the House (which previously was concerned for consumers over this part of the bill) has since flipped control.

10.11. **SAFE HARBOR 403(b)s.** Employers without a retirement plan may offer a new "Safe Harbor 403(b)" plan, which generally requires auto-enrollment (with opt out) and a 3%-15% employer contribution rate. Starts in 2024.

10.12. **SAVER'S MATCH.**

10.12.1. **The Saver's Tax Credit still exists for 2023 through 2026.** It provides lower- and middle-income Americans who contribute to a retirement plan by providing a $1,000 credit ($2,000 for married couples) when their tax return is filed. (Those under age 18, full-time students, or claimed as a dependent on another's return are excluded from claiming the credit.) The credit cannot be larger than the taxpayer's overall tax liability.

2023 SAVER'S CREDIT INCOME LIMITS			
Credit Amount	**Single**	**Head of Household**	**Joint Filers**
50% of contribution	AGI of $21,750 or less	AGI of $32,625 or less	AGI of $43,500 or less
20% of contribution	$21,751 – $23,750	$32,626 – $35,625	$43,501 – $47,500
10% of contribution	$23,751 – $36,500	$35,626 – $54,750	$47,501 – $73,000
0% of contribution	more than $36,500	more than $54,750	more than $73,000

10.12.2. **The Saver's Tax Credit is Replaced by the Saver's Match Commencing in 2027.** The federal government will deposit a "matching contribution" to any non-Roth retirement account chosen by the taxpayer. The amount deposited does not count toward the taxpayer's annual contribution limit. The matching contribution is 50% of the first $2,000 contributed to eligible retirement accounts by the taxpayer.

10.12.2.1. The phase-out ranges (for the income limits) change slightly (and are inflation-adjusted). The phase-out ranges for the Saver's Match are $20,500 to $35,000 for single taxpayers, and $41,000 to $71,000 for married filing jointly. The match is gradually reduced to zero during these ranges, which will be adjusted annually for inflation beginning in 2028.

10.12.2.2. The American Retirement Association estimates that 108 million Americans will be eligible for the Saver's Match.

10.13. **STUDENT LOAN PAYMENTS MATCHING CONTRIBUTIONS**

10.13.1. Starting in 2024, with an amendment to their plan, employers can do employer matches for amounts paid by plan participants toward their student debt.

10.13.2. A lot of employers are likely to add this provision, given the need and desire of employers to attract and retain young talent, and the growth in student loan balances in recent years.

10.14. **OPTIONAL EMERGENCY SAVINGS ACCOUNTS.**

10.14.1. Commencing 2024, companies may permit employees to set up an emergency savings account via automatic payroll deductions

10.14.1.1. May auto-enroll employees in these accounts, with an opt-out

10.14.2. Eligibility restrictions exist: (1) Not 5% or greater owner; (2) not highly compensated employee (greater than $135,000 in 2023) in the previous year; (3) not in top 20% of compensation at the employer

10.14.3. Contributions can be made up to $2,500 (indexed for inflation), ignoring any interest earned

10.14.3.1. Employee contributions are eligible to receive matching contributions

10.14.3.2. All contributions are treated as after-tax Roth wage deferrals

10.14.3.3. Employers may auto-enroll employees for these accounts, at no more than 3% of salary

10.14.4. Accounts must be held in principal-protected accounts (cash or other interest-bearing)

10.14.5. Participants withdrawals are not subject to income tax nor penalties (treated as qualified distributions from a Roth account)

10.14.5.1. Employees can make up to one withdrawal per month

10.14.5.2. First four withdrawals each year cannot be subject to any withdrawal fees

10.15. **DE MINIMIS BENEFITS TO ENCOURAGE EMPLOYEE CONTRIBUTIONS.** Effective in 2023, employers may provide de minimis benefits – such as low-value gift cards (mentioned in Senate Finance Committee summary) as an incentive for employees to contribute to a 401(k) or 403(b) plan without violating the IRS's "contingent benefit rule."

10.15.1. The incentives cannot be paid from plan assets.

10.15.2. Given to employees who make contributions to the plan.

10.15.3. IRS guidance on what is "de minimis" would be helpful.

10.16. **TAX CREDITS FOR EMPLOYERS FOR HIRING MILITARY SPOUSES.** Effective in 2023, employers with 100 or fewer employees earning at least $5k in annual compensation can receive a general tax credit of up to $500 for three years, if they make miliary spouses eligible for defined contribution plan participation within two months of hire, if such spouses are then eligible for any employer matching or employer non-elective contributions, and if such spouse is 100% vested in employer contributions. The credit is $200 per participating non-highly compensated spouse, plus 100% of

employer contributions made to the military spouse up to $300. The tax credit is available in year of hire and for subsequent two years, for each military spouse.

10.17. **REPLACING SIMPLE IRA/401K WITH SAFE HARBOR PLANS.** Effective in 2024, employers can replace a SIMPLE IRA with a SIMPLE 401(k) or any other 401(k) plan that requires mandatory employer contributions *during a plan year*.

10.18. **LESSENED AUDIT REQUIREMENTS FOR INDIVIDUAL PLANS IN GROUP PLANS.** Within group plans, only those individual plans – that would have been subject to an audit requirement if they remained separate – are required to have an audit. This avoids the audit fee, which would be a relatively high cost for smaller individual plans which joined a group plan. This provision, together with another provision providing relief from the "one-bad-apple" rule for violations, is designed to encourage the use of multiple-employer plans (MEPs) and pooled employer plans (PEPs).

10.19. GREATER FLEXIBILITY PROVIDED FOR EARLY WITHDRAWALS WITHOUT PENALTIES

10.19.1. **Employee's certification for hardship distributions, commencing 2023**

10.19.1.1. For 401(k) and 403(b) plans, employers may rely on an employee's certification of both: (A) that an immediate and heavy financial need exists; and (B) that the amount of the requested distribution is not more than the employee's financial need.

10.19.1.2. For governmental 457(b) plans, similar self-certification rule applies to unforeseeable emergency distributions

10.19.1.3. BUT: hardship distribution not permitted if the employer has actual knowledge to the contrary, of the facts stated in the self-certification.

10.19.1.3.1. IRS guidance would be helpful, as to level of oversight required by plan administrators and/or employers.

10.19.1.3.2. 403(b) plan hardship rules otherwise will conform to 401(k) plan hardship rules. Commencing in 2024.

10.19.2. **New Emergency Withdrawal Exception.** Beginning in 2024, retirement plans may permit "emergency withdrawals" up to $1,000 per year (and only one such distribution per year) and be exempt from the 10% penalty. May be taken by any employee who experiences "unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses." Cannot take a second withdrawal until the earlier of either: (1) three years have passed since the Emergency Withdrawal; (2) regular employee deferrals and other employee contributions made to the plan total at least as much as the amount of the prior distribution; or (3) the prior distribution has been fully repaid.

10.19.3. **Terminally ill.** If person is certified by physician to be terminally ill – with death reasonably expected to result within seven years – then early distributions may occur without 10% penalty. Such distributions may be repaid within 3 years.

10.19.4. **Qualified birth or adoption distributions (QBOADs).** Parents may take up to $5,000 (not an inflation-adjusted amount) from retirement accounts within a year of a child's birth or adoption, without the 10% penalty. Applies to each individual; employee's spouse may separately receive a $5,000 QBOAD. Repayment can occur – if the individual is still eligible to

make contributions to the plan; there is no express time limit in the legislation under which repayment must occur (expect this to be fixed in a technical correction bill, later).

10.19.5. **Victims of domestic abuse.** Distributions authorized from defined contribution plans and IRAs, without 10% penalty, within one-year period after person has become a victim, up to lesser of: (A) 50% of vested balance; or (2) $10,000 (inflation-adjusted). All or a portion of the distribution may be repaid into the account within three years.

10.19.6. **Qualified Long-Term Care distributions.** If individuals have paid LTCI premiums equal to or greater than their distribution from a retirement account that year, and provide their plan with a “Long-Term Care Premium Statement,” then retirement account distribution to pay for those LTCI premiums is permitted up to lesser of: (1) 10% of their vested balance; or (2) $2,500 (inflation-adjusted).

10.19.7. **If plan participant or IRA owner is affected by a federally declared disaster**

10.19.7.1. Penalty-free distributions up to $22,000 per participant – may be taken anytime within a 3-calendar-year period.

10.19.7.2. Recontributions of the amounts taken out can occur within three years.

10.19.7.3. If already existing loan at time of the federally declared disaster, plan can provide that repayment period extended by one year.

10.19.7.4. Plans can increase the loan limit to $100,000 for those affected by federally declared disasters.

10.19.8. **Disabled Qualifying First Responders**. Law enforcement officers, paramedics, EMTs, and firefighters who receive service-connected disability pensions (previously income-tax free) can now receive retirement distributions (which occur when they reach a certain age, at which time disability pensions stop) and have an “excludable amount” (generally, the income receive in the year before retirement age). This provision is effective commencing in 2027; the provision appears to apply to all retirement distributions for such disabled qualifying first responders, even if the injury occurred many years earlier.

10.20. **Pubic Safety Workers**. May withdraw without the 10% penalty either; (1) after age 50 (as before, under prior law); or (2) if not yet age 50, then when 25 or more years of service for the employer sponsoring “the plan.”

10.20.1. Expect a technical correction at some point, to clarify that the 25 years of public safety work may be split among different employers.

10.20.2. Public safety workers now also include private-sector firefighters.

PREDICTIONS FOR SECURE ACT 3.0

1) **What was left out of SECURE 2.0 will be modified slightly to try to make it into the next retirement legislation:**
   a) Securities law provisions that permit CITs in 403(b) accounts
   b) Limit the use of back-door Roth IRA conversions
   c) Place new limits on those eligible to do Roth IRA conversions (controversial)
   d) Create RMDs when Roth IRAs exceed a certain amount (controversial)
   e) Eliminate privately held investments from being purchased inside IRA accounts (although there already exists a lot of tax traps in this area, for the unwary)
   f) Clarify the 10-year rule for post-death RMDs, as to when deceased was already taking RMDs at the time of his/her death. (IRS proposed regulations on this were a surprise; whether the final regulations will correct the IRS interpretation is unknown.)
      i) Under IRS Notice 2022-53, no RMDs were required in 2021 or 2022 for non-spouse beneficiaries.
      ii) The final regulations are anticipated later in 2023.
2) **Bipartisan receptiveness was present to require 100% vesting of employer contributions in Ron's recent discussions with Congressional staff**
   a) Some 100% (immediate) vesting requirements were required in some of the specific provisions of SECURE ACT 2.0, such as for employer contributions to Roth accounts.
   b) Such immediate vesting, if adopted by a future Congress, could lead to the elimination of non-discrimination testing requirements, provided non-highly-compensated employee participation rate of 80% is achieved by the plan. This could reduce the cost of plan administration.
3) **Expansion of the maximum amount in the emergency account is likely.**
   a) Once the amount of this emergency account is seen to be inadequate, such as during the next significant financial downturn in which layoffs occur, pressure will exist to increase the size of emergency accounts.
4) **Expansion of number of employer-sponsored plans mandated to provide auto-enrollment** (with opt-outs by employees). Once the effectiveness of the requirement imposed on 2025 (and beyond) new plans is seen, it will be difficult for Congress to not embrace this change.
5) **Ron has a great number of "wish list" provisions.** Whether these gain any traction, however, is hard to predict.

BEAR'S WISH LIST FOR CONGRESS

1) **One defined contribution plan to "rule them all" ("New IRA" – "NIRA")** – with one set of rules replacing the myriad different rules applicable to SIMPLE IRAs, SEP IRAs, 401(ks) (and their variants), 403(b)s, 457s, Thrift Savings Accounts, IRAs.
    a) Goals include substantially minimizing costs incurred in connection with third-party administrators, simplify compliance costs substantially, and simplify the operation of plans to enable greater understanding by employees.
    b) Employers should be able to change amount of employer match or contributions at any time, to react to changing business conditions.
        i) Employers would be encouraged to set aside a "fund" for future contributions, during business downturns, and employers would be provided a current-year tax deduction for contributions to such a "pre-funding" general account. This could encourage employers to continue contributions to defined contribution accounts during economic downturns (when asset values are typically low).
    c) Immediate vesting of all employer contributions
        i) No nondiscrimination testing required, provided participation by 80% or greater of non-highly compensated employees occurs, as measured within a period following each calendar year (concurrent with filing of annual reports).
    d) Early withdrawals and loans – one set of rules applies as to when they are available. Same rules for employer-sponsored plans and IRAs (traditional and Roth)
    e) Standard IRS form utilized for all plans, for ease of adoption (check-the-box)
        i) Make it easy to amend the plans.
        ii) DOL/IRS could provide amendments.
    f) Employers could repeal / modify / replace / terminate the plan at any time with proper notice to employees.
    g) Increase threshold for the plan audit requirement to $25 million and index the limit for inflation.
    h) Direct DOL to ensure that all fees and costs are disclosed on Form 5500, by dollar amount and by service provider, in plan sponsor disclosures.
    i) Direct DOL to ensure that asset-based fees are disclosed adjacent to the annual expense ratio for an investment option, with a "total annual fees" (as a percentage, and as a dollar amount given the size of the account and investments made) also disclosed to plan participants.
    j) Upon separation from service, and upon request by employee, the account may be "disconnected" from the plan (and any fees charged by the plan), and made into an individual retail account, provided the custodian permits same. Any employee to be provided a guide on the "individual New IRA account" – produced by DOL and IRS – that explains its functioning, IRA RMD rules, etc.
2) **Eliminate the 2-year withdrawal limitation generally applicable to SIMPLE IRAs** – it's a tax trap for the unwary

3) **Subject governmental 403(b) plans to ERISA and to DOL oversight, unless the state adopts a specific law** addressing the standards of conduct applicable to advisers to the plan, which law must not permit commission-based compensation nor 12b-1 fees, nor add-on group annuity fees.

4) **One annual limit amount, per person, for total of contributions to all retirement plans during each calendar year**.

   a) Contributions permitted up to April 1st of the following year for all plans.

   b) No getting around this through various types of defined benefit plans, such as age-weighted plans. Modify DB plan contribution rules accordingly.

5) **Permit all employer-sponsored qualified retirement plan accounts to make distributions, up to certain amount(s) each year, for payment of financial planning and investment advisory fees.**

   a) May be submitted and paid 2x/year. No withdrawal fees imposed on such distributions.

   b) Distributions not taxable to the employee (but included as income to the advisor).

   c) Financial planning fundamentals – how much to save, how to budget and/or control expenditures, asset allocation – is a key to encouraging greater saving. Yet, the current system does not incentivize advice for this purpose.

   d) Payment of fees for investment advice from all plan assets, pro rata, from the plan assets, as is often done currently, is unfair to those who don't desire such investment advice, or who utilize independent investment advisers (who typically cannot be compensated by the plan). It also requires those with large plan balances to effectively subsidize the costs incurred by those with smaller plan balances.

6) **All providers of investment recommendations to plan sponsors and to plan participants and to IRA owners are required to be fiduciaries – for all financial planning advice, investment recommendations, and even for "investment education." (This returns to the express language of the "five-part test" – which has been misinterpreted over many decades.)**

   a) No commission-based compensation, no 12b-1 fees to be permitted in the "New IRA" (whether in an employer retirement plan account or individual account).

   b) The tax-deferral benefits provided by qualified retirement plans and IRAs should not be offset by often-detrimental conflict-ridden advice.

7) **Recommendations to undertake an IRA rollover are expressly subject to ERISA's fiduciary standard and the prudent investor rule, but no specific rule should exist on IRA rollovers, nor any specific documentation requirements.**

   a) It is just so easy to justify IRA rollovers ... just have an investment strategy that cannot be implemented via the qualified retirement plan offerings.

      i) Current software for IRA rollover compliance is largely a joke. It increases costs on financial services firms, without providing a serious benefit for consumers.

   b) *Stick with a principles-based standard*. Since burden of proof of compliance with fiduciary duty is on the fiduciary, documentation of the rationale for a rollover is a prudent practice.

   c) Make IRAs subject to the fiduciary standard of conduct, and the prudent investor rule, at all times.

8) **Annuitization to require fiduciary advice.** Any recommendation to "annuitize" a portion of any qualified retirement plan / IRA (over a certain amount, and/or greater than percentage of all tax-deferred accounts held by the individual) should require fiduciary advice to be provided, first.

   a) Such fiduciary advice should include the duty to compare current offerings in the marketplace (for fixed immediate annuities, for example), considering all relevant factors as part of the due diligence process.

   b) *The annuitization decision is a key financial decision in one's life*, that deserves the requirement that financial advice, if provided at all, be subject to fiduciary duties of due care (including due diligence and consideration of alternatives) and loyalty.

9) **Repeal Roth IRAs and Roth accounts in employer-sponsored plans –** due to their tremendous negative impact on the future federal budget. Grandfather in all existing Roth IRAs for continuation of tax-free growth during their lifetimes. However, require Roth IRAs to be distributed in year following a Roth IRA owner's end-of-lifetime (excluding spousal rollovers).

10) Fix the Underfunding of the Social Security and Medicare Trust Funds

   a) Neither cuts to benefits alone, nor increased taxes alone, are palatable. A combination of the foregoing is required.

   b) Small percentage tax on all QRP (DB and DC) and IRA distributions, for the next 20 years (then sunsets)

      i) Because of the underfunding of the trust funds by those in the generations who are already retired.

      ii) Don't impose the entire burden of underfunding on the subsequent generations. *Not fair!*

      iii) Applies to everyone, regardless of income tax bracket. Small, fixed percentage applicable to everyone.

      iv) Also applies to distributions from nonqualified retirement plans.

   c) Increase full retirement age (FRA) over time to age 69 (starting ten years from now, and phase this in (similar to the last increase in FRA)

   d) Increase earliest date for taking social security retirement benefits from age 62 to 64, over time

   e) Slight increase, phased in, to FICA tax rates, over time. Commencing next year.

THE TRADITIONAL VS. ROTH DECISION: OBSERVATIONS ON THE INHERENT UNCERTAINTIES

Are you properly alerting your clients to all the uncertainties that are present regarding the traditional vs. Roth (and Roth conversion) decisions?

1) **The choice of whether to place new savings in taxable, tax-deferred, or tax-free accounts – where all three are available – is surprisingly complex**. A lot of assumptions are required about future income tax rates, and even the existence of future income taxes. Some excellent academic articles exist on traditional vs. Roth IRA funding strategies, and on Roth IRA conversions. And a number of articles espouse different decumulation strategies when different types of accounts are present. However, the assumptions made in these articles are numerous, and even more assumptions are implied – especially as to future tax policies.

2) **Asset placement by type of account:**
   a) Generally, the asset classes with the highest expected returns go into Roth accounts
   b) Generally, allocate taxable accounts to equities:
      i) Non-realization of gains
         (1) Made easier with the rise of tax-efficient equity ETFs, and the tax loophole that permits low-basis stock to be shunted off to accumulation units that are redeemed by nontaxable entities
         (2) Ability to use tax lot selection
         (3) Ability to harvest tax losses
         (4) Stepped-up basis
      ii) LTCG and qualified dividend treatment
      iii) Foreign tax credits or tax deductions available
   c) Generally, allocate fixed income investments to tax-deferred accounts
      i) Due to potential tax benefits, if client has a high-deductible health plan (HDHP), fund their H.S.A. account to the limit, before funding other traditional 401(k)/traditional IRA accounts (*except as necessary to secure employer matches*).
      ii) The ability to secure an income tax deduction going in, but then use the funds for a broad variety of qualified medical expenses, is one of the most tax-advantaged provisions of the I.R.C.
      iii) Even when on Medicare, while H.S.A. accounts may not be funded anymore at that time, accumulated H.S.A. balances can be used to pay deductibles and co-pays and co-insurance payments. As well as dental work, hearing aids, and eyeglasses – currently not covered by traditional Medicare. The H.S.A. balance can even be utilized to reimburse the taxpayer for Medicare Part B, Part D and Medicare Advantage premiums.

3) **The tax policy uncertainties … and planning considerations …**

a) RMDs … 20 years from now, RMDs might be quite lower, and stretch out for far longer.

i) Dramatic increases in longevity potentially ahead

ii) Some scientists believe that persons born today may live to age 140 or 150

b) Married Couples / if one dies survivor has compressed tax brackets

c) Impact of higher income on increases in Medicare Part B/D premiums. Also … will Medicare be replaced?

d) If the longevity of a single client, or both married clients is low, one might consider the marginal tax rates of the intended heir of a traditional IRA

i) If a significant charitable bequest to be made at the end of one's lifetime, then the traditional IRA becomes more palatable as the vehicle to effect same, and Roth IRA conversions may be limited to a degree.

e) Will federal income tax rates go higher in future years?

i) 2026: TCJA of 2017 lower income tax rates expire, return to prior rates (with brackets adjusted for inflation)

(1) Through calendar year 2025, taxable ordinary income earned by most individuals is subject to tax rates of 10%, 12%, 22%, 24%, 32%, 35% and 37%.

(2) In 2026, absent legislation by Congress, the rates revert back to the pre-2018 rates of 10%, 15%, 25%, 28%, 33%, 35%, and 39.6%.

ii) Tax rates likely higher in future decades due to blossoming size of federal debt

f) Will we even have an income tax in the future? The move by some in Congress to abolish income taxes for most taxpayers, and replace with national sales tax or value-added tax (V.A.T.)

g) Will Roth IRAs End?

i) Contributions to Roth accounts rather than traditional QRP/IRA accounts benefits the federal budget today, as revenues are increased.

ii) But it causes as huge hit to federal budget in future years, as Roth IRA assets are excluded from the income tax base.

(1) This results in a loss of flexibility to federal government in raising tax rates in the future, to tax this source of retirement income.

(2) The revenue losses hit most when baby boomers are aging and placing greater and greater demands on the federal government for support.

(3) Assuming a 33% tax rate, a contribution to a Roth account shelters 50% more income from tax than a contribution to a traditional retirement account. (Tax Policy Center report, 2019).

iii) One can more easily foresee, at some future time, the end of Roth IRA post-death distributions over 10 years.

(1) Already seen the end to stretch IRAs (with exceptions)

(2) No tax burden if all of Roth IRA distributed by year following date of death

iv) While the removal of tax-favored provisions often results in "grandfathering" – and this may well occur if Roth account contributions are ever done away with by Congress – it remains possible that Congress, if under severe fiscal pressure, could terminate all Roth accounts (i.e., force their distributions, into taxable accounts).

4) On the benefits of Roth IRA conversions in early retirement years

a) Retirees: while both partners of a married couple are alive, Roth conversions prior to taking social security benefits can dramatically decrease the survivor's taxable income after the death of the first spouse, which can substantially reduce not just income taxes (by avoiding higher marginal tax rates) but also reduce the survivor's Medicare premiums

b) For lower-income retirees

(1) Taxation of social security benefits – crossing the threshold of provisional income results in a "tax torpedo" – effectively higher marginal tax rates than those set forth in the tax brackets b/c of the amount of social security benefits (50% or 85%) also now subject to income taxes.

(2) This is a disappearing issue – higher social security retirement benefits, no increase in thresholds for taxation of social security benefits since 1984, resulting in more and more low-income Americans having 85% of social security retirement benefits subject to taxes.

5) Where will your clients reside in retirement?

a) A planned move to a state with no state income taxes (Texas, Florida, Tennessee, etc.) can lead to considerations to do contributions to traditional QRP and IRA accounts today, as combined federal/state/local taxes might be lower after the move.

b) Many of those who move to another state return soon, due to disconnect from their family and others in their community.

c) Note also that some states with state income taxes have exclusions from state income tax for certain amounts of pension and/or qualified retirement account distributions (such as Kentucky, with $31,110 exemption). Note also that Kentucky's state income tax rate is 4.5% in 2023 and will likely decrease further over time.