ANALYZING THE NEW PLANNING OPPORTUNITIES IN SECURE 2.0 FOR RETIREMENT PLAN PARTICIPANTS

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This article examines and analyzes six major changes enacted by the SECURE 2.0 Act of 2022 pertaining to plan participants in existing retirement plans. Those changes relate to: (1) increased contribution limits for 60-year-old employees, (2) longevity annuities, (3) charitable gift annuities, (4) long-term care insurance, (5) unused funds in section 529 college savings plans, and (6) emergency withdrawals. These provisions vary considerably in their connection to the principal purpose of employer-provided retirement plans—namely, to finance the retirement of affected employees. But they represent Congressional efforts to address some of the deficiencies in the present tax-subsidized matrix of employer-provided retirement savings plans and may appeal to affected plan participants. In this regard, they continue the pattern in recent years of using pension plans to accommodate an ever-widening array of social initiatives that are related only tangentially, if at all, to providing income when plan participants retire.

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Introduction

The most recent reform of U.S. retirement plan provisions was the enactment at the very end of 2022 of legislation known officially as the SECURE 2.0 Act of 2022.[1] The "2.0" is a reference to the previous compilation of miscellaneous provisions enacted at the end of 2019.[2] That iteration was denominated the Setting Every Community Up for Retirement Enhancement,[3] thereby creating one of the more linguistically awkward legislative acronyms of all time—namely, SECURE.

Like its predecessor, SECURE 2.0 comprises a mishmash of various provisions intended generally to encourage employers to provide retirement plans for their employees.[4] This new legislation has over 90 separate provisions[5] and its major thrust is to incentivize smaller employers to create retirement plans where previously they had declined to do so.[6] Those incentives, however, do not explain many of the other provisions in this curious assemblage, and the focus of this article is on six major changes that pertain to plan participants in existing retirement plans. These changes relate to: (1) increased contribution limits for 60-year-old employees, (2) longevity annuities, (3) charitable gift annuities, (4) long-term care insurance, (5) unused funds in section 529 college savings plans, and (6) emergency withdrawals.

On the one hand, these provisions vary considerably in their connection to the principal purpose of employer-provided retirement plans—namely, to finance the retirement of affected employees.[7] But on the other hand, they represent Congressional efforts to address some of the deficiencies in the present tax-subsidized matrix of employer-provided retirement savings plans and may appeal to affected plan

1. SECURE 2.0 Act of 2022, Pub. L. No. 117-328, 136 Stat. 4459 (2022) (codified as Div. T of Consolidated Appropriations Act, 2023 in scattered sections of 26 U.S.C. and 29 U.S.C.).

2. Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, Pub. L. No. 116-94, 133 Stat. 2534, 3137 (codified as Div. O of Further Consolidated Appropriations Act, 2020, 26 U.S.C. § 45T).

3. *See id.*

4. *See* SECURE 2.0 Act § 1–606; STAFF OF S. FIN. COMM., 117TH CONG., SECURE 2.0 ACT OF 2022, TITLE I–EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS 6 (2022), https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf [hereinafter S. FIN. COMM.] [https://perma.cc/S44A-47FJ].

5. *See* Albert Feuer, *Secure Act 2.0: A Missed Opportunity to Enhance Retirement Equity*, 51 TAX MGMT. COMP. PLAN. J., Jan. 6, 2023, at 1.

6. *See id*. at 2; *see also* SECURE 2.0 Act §§ 102, 111.

7. *See* Feuer, *supra* note 5, at 2.

participants.[8] It is in this latter spirit that this article undertakes to analyze and critique these new provisions.

I. Increased Contribution Limits

Employer-provided retirement savings plans have always had dollar limits on how much employees could contribute in a given calendar year,[9] and the tax code has long allowed additional so-called "catch-up" contributions by employees who are at least 50 years old.[10] These "catch-up" contribution limits are adjusted periodically for inflation[11] and in 2024 were $7,500 for retirement savings plans[12] other than so-called SIMPLE plans[13] and $3,500 for SIMPLE plans.[14] The premise of these higher contribution limits for workers aged 50 years and older is that retirement may be a more concrete goal for such workers, and they might therefore want to boost their retirement savings at this point in their lives.[15] In the SECURE 2.0 legislation,[16] Congress augmented this approach by raising the relevant savings limits by 50%,[17] but only for employees who are 60–63 years old before the end of the taxable year.[18] This provision takes effect in 2025.[19] The unaugmented limits continue to apply to employees who are 50–59 years old and to employees who are age 64 or older by the end of the year.[20]

The precise details are somewhat convoluted because the provision applies to the two different categories of plans on different schedules.[21] Thus, for retirement savings plans other than SIMPLE plans, the

8. *Id.* at 1.
9. *See, e.g.*, I.R.C. § 402(g)(1).
10. *Id*. § 414(v).
11. *Id*. § 402(g)(4).
12. I.R.S. Notice 2023-75, 2023-47 I.R.B. 1256, 1256.
13. *See* I.R.C. § 408(p).
14. I.R.S. Notice 2023-75, 2023-47 I.R.B. 1256, 1256.
15. Ryley Amond, *What are Catch Up Limits and How do They Work?*, CNBC SELECT (Feb. 12, 2024), https://www.cnbc.com/select/what-is-a-catch-up-contribution/ [https://perma.cc/7ELJ-BASL]. *See generally* Ann Carns, *Higher Contribution Limits Are Coming for 401(k) Retirement Plans*, N.Y. TIMES (Nov. 11, 2023), https://www.nytimes.com/2023/11/10/your-money/401k-retirement-contribution-limits.html [https://perma.cc/Z5VQ-8J5G] (noting that catch-up contributions are meant to bolster "nest eggs").
16. SECURE 2.0 Act § 109(b).
17. I.R.C. § 414(v)(2)(E).
18. *Id*. § 414(v)(2)(B)(i), (ii).
19. SECURE 2.0 Act § 109(d).
20. *See* I.R.C § 414(v)(2)(B)(i).
21. *See id.* § 414(v)(2)(B), (E).

50% increase in the maximum contribution amount applies to the otherwise applicable limit for calendar year 2024,[22] even though the provision does not take effect until 2025, as noted above. Meanwhile, the increase for SIMPLE plans applies to the limit that otherwise pertains to such plans in calendar year 2025.[23] Neither of these limits were known when SECURE 2.0 was enacted and will not be known for some time still, but this difficulty is really not problematic, because the augmented savings limits do not apply until 2025.[24] At that point, the pertinent limits will be known and the 50% increase for employees aged 60-63 years will be readily determinable.

The administrative complexity that this new provision will impose on affected employers, however, is not trivial and is compounded further by a separate requirement—namely, that employees earning above a specified annual income threshold must make their additional retirement account contributions as "Roth" contributions.[25] Roth contributions are made on an after-tax basis;[26] that is, these contributions must be made *after* federal income tax has been paid on the earnings received from the employer. This requirement necessarily makes such contributions more expensive than pre-tax contributions.

To illustrate, assume that an age-eligible employee wants to contribute an additional $4,000 to their retirement account, and that person is in the 32% income tax bracket. In this circumstance, the employee must earn $5,883 to have $4,000 remaining after paying $1,883 in federal income tax.[27] In contrast, an employee earning less than the stipulated threshold would need to earn only the $4,000 that they intend to contribute to their retirement plan.

Moreover, this after-tax requirement applies to an employee's *entire* "catch-up" contribution, and not just to the incremental contribution authorized by this new provision.[28] This requirement makes the

22. *Id.* § 414(v)(2)(E)(i)(II).
23. *Id*. § 414(v)(2)(E)(ii)(II).
24. SECURE 2.0 Act § 109(d).
25. I.R.C. § 414(v)(7)(A), added by SECURE 2.0 Act § 603(a). This requirement does not apply to SIMPLE plans. I.R.C. § 414(v)(7)(C). Recognizing the complexity of this change, the I.R.S. has provided a two-year "administrative transition period" that delays the effective date of this provision until 2026. *See* I.R.S. Notice 2023-62, § IV, 2023-37 I.R.B. 817, 818.
26. I.R.C. § 402A(c)(1).
27. If x represents pre-tax earnings and $4,000 are earnings after paying taxes at 32%, then x - .32x = $4,000, which reduces to .68x = $4,000. Solving for x, $4,000 ÷ .68 = $5,882.35.
28. *See* I.R.C. § 414(v)(7)(B).

cost of the enhanced "catch-up" contribution still more expensive, in effect. In any case, the applicable threshold for this Roth-only rule is set by the SECURE 2.0 legislation at $145,000,[29] although that amount will be adjusted periodically for inflation.[30] It is not clear whether this threshold is applied differently for married or single taxpayers, but the structure for implementing these additional retirement plan contributions is clearly employer-based.[31] As a result, the applicable threshold will probably be determined on an individual-employee basis, because that is the only *earnings* information that an employer would have easy access to.

II. Longevity Annuities

A cornerstone of most retirement planning involves annuities of some sort.[32] Annuities are contracts that pay a stipulated amount annually, or more typically monthly, as long as the contract purchaser—usually called the annuitant[33]—is alive.[34] Any funds remaining after the annuitant passes away are generally forfeited to the insurance company that sold the annuity, although some annuities have "refund features" that guarantee a minimum payment to a designated beneficiary, depending on the terms of the specific contract at hand.[35] In other instances, an annuity might provide that payments will continue after the annuitant dies to someone—most often, that person's spouse—who is typically designated when the annuity is first purchased.[36] Survivor payments and refund features are not cost-free options, however.[37] They reduce the amount paid to the original annuitant beginning with the very first payment that person receives.[38] But if the annuitant is willing to abide by that reduction, these post-mortem options are available.

29. *Id.* § 414(v)(7)(A).
30. *Id.* § 414(v)(7)(E).
31. *See id.* §§ 414(v)(5)–(6) (defining "eligible participant" as an individual "who would attain age 50 by the end of the taxable year" and defining applicable employer plans without reference to spouses).
32. *See Annuities—A Brief Description*, IRS (June 5, 2023), https://www.irs.gov/retirement-plans/annuities-a-brief-description [https://perma.cc/B5MF-ZN33].
33. *Id.*
34. *See* RICHARD L. KAPLAN, ELDER LAW IN A NUTSHELL 349–51 (8th ed. 2023) [hereinafter KAPLAN, ELDER LAW NUTSHELL].
35. *See* ERIC MILLS HOLMES & JOHN ALAN APPLEMAN, APPLEMAN ON INSURANCE LAW AND PRACTICE 1F-4F, at § 88 (2d ed. 2011).
36. *See* KAPLAN, ELDER LAW NUTSHELL, *supra* note 34, at 349–50.
37. *See id.*
38. *See id.* at 350.

Social Security is itself a form of an annuity, but its terms are not subject to modification by the recipient of the benefits that it pays out.[39] On the other hand, Social Security pays specified amounts as a matter of course to survivors of the deceased worker, including that person's spouse,[40] minor children,[41] parents who were financially dependent on the deceased worker,[42] and divorced spouse(s) if their marriage lasted at least ten years.[43] But Social Security has nothing comparable to the refund feature that is sometimes—though not always—available in a private annuity.[44] That said, Social Security benefits are adjusted annually for inflation[45] and retain their relative value throughout a beneficiary's retirement, a feature that very few private annuities provide.[46]

This general lack of inflation protection makes many retirees concerned that the value of their private annuities will decline over time and that their standard of living will correspondingly diminish if they live past a certain age.[47] In response to this concern, some insurers have developed deferred annuities that are purchased currently but do not begin paying benefits until five or even 10 years later.[48] This financial arrangement seeks to ameliorate the sense of dread that some retirees may experience worrying that their resources will be insufficient later in life.[49] In any case, deferred annuities are often a difficult product to sell, because purchasers receive nothing in return for their money until the specified benefit commencement date arrives.[50]

39. *See id.* at 272–75.
40. 42 U.S.C. § 402(e)(2).
41. *Id*. § 402(d)(1).
42. *Id*. § 402(h).
43. *Id*. § 416(d)(1), (4).
44. *Id.* § 402(e).
45. *Id*. § 415(i); *but see generally* KAPLAN, ELDER LAW NUTSHELL, *supra* note 34, at 263–83.
46. *See* KAPLAN, ELDER LAW NUTSHELL, *supra* note 34, at 264.
47. *See* Karolos Arapakis & Gal Wettstein, Ctr. Ret. Rsch. B.C., Longevity Risk: An Essay 14 (2023), https://crr.bc.edu/wp-content/uploads/2023/11/2023_Longevity-Risk.pdf [https://perma.cc/D3TA-BK8C].
48. *See* JACOB RABKIN, MARK JOHNSON & MARY HOWLEY, 4 FEDERAL INCOME, GIFT AND ESTATE TAXATION § 63.06 (2023).
49. *See* Anqi Chen, Yimeng Yin & Alicia H. Munnell, *How Well Do People Perceive Their Retirement Preparedness?*, 23-12 CTR. RET. RSCH. B.C. 4 (June 6, 2023), https://crr.bc.edu/how-well-do-people-perceive-their-retirement-preparedness/ [https://perma.cc/D2NJ-ZN8L].
50. *See* RABKIN, JOHNSON, & HOWLEY, *supra* note 48, at § 63.06.

A. Qualified Longevity Annuity Contracts

To encourage the purchase of deferred annuities, the U.S. Treasury Department issued regulations in 2014 that provide that the purchase price of a Qualified Longevity Annuity Contract (QLAC) will be disregarded in computing an annuitant's Required Minimum Distribution (RMD).[51] Although this initiative might have been justifiable on public policy grounds, there was never any statutory foundation for issuing these regulations, and some advisors urged caution for that reason alone.[52]

This legal conundrum was resolved by SECURE 2.0, which provided the statutory authorization for QLACs[53] and also made them more appealing. The maximum sales price of a QLAC was set at $125,000 in the authorizing regulations,[54] but subsequent adjustments for inflation raised this limit to $155,000 in 2023.[55] SECURE 2.0 raised this limit to $200,000[56] (to be adjusted periodically for inflation going forward),[57] and eliminated[58] the percentage-of-account limitation that was in the regulations.[59] These changes are effective for annuity contracts purchased on or after December 30, 2022.[60]

In this context, consider the following example: Sally has an IRA with a prior year-end fair market value of $1,000,000. Assuming that Sally is 73 years old, she must withdraw enough each year to satisfy the RMD mandate. If she purchases a QLAC costing $200,000, her RMD will be computed by disregarding this purchase price. Thus, the relevant year-end value of her IRA would be $800,000 (i.e., the prior year-end value of $1,000,000 - QLAC cost of $200,000), which is then divided by the IRS life expectancy factor for someone age 73—namely, 26.5[61]—to yield an RMD of $30,189. If Sally had not purchased the QLAC, her

51. Treas. Reg. § 1.401(a)(9)-5, A-3(d) (2024).
52. *See* STAFF OF S. COMM. ON HEALTH, EDUC. LAB. & PENSIONS, 118TH CONG., SECURE 2.0 SECTION BY SECTION 8 (2023).
53. SECURE 2.0 Act § 202(a).
54. Treas. Reg. § 1.401(a)(9)-6, A-17(b)(2)(i) (2014).
55. I.R.S. Notice 2022-55, 2022-45 I.R.B. 443.
56. SECURE 2.0 Act § 202(a)(2)(A).
57. *Id*. § 202(a)(2)(B). This limit remained $200,000 in 2024; *see* I.R.S. Notice 2023–75, 2023–47 I.R.B. 1256, 1256.
58. SECURE 2.0 Act § 202(a)(1).
59. Treas. Reg. § 1.401(a)(9)-6, A-17(b)(3)(i) (2014).
60. SECURE 2.0 Act § 202(c)(1)(A).
61. *See* Treas. Reg. § 1.401(a)(9)-9(c) (2020); I.R.S. Pub. No. 590-B, Cat. No. 66303U, 65 app. B, tbl.3 (2023).

RMD would have been $37,736[62]—a difference of $7,547. In other words, the QLAC lowered Sally's current RMD and therefore her current income tax liability,[63] thereby preserving more of her retirement assets until later in life. This temporal shift is the principal immediate benefit of a QLAC.

In addition, SECURE 2.0 provides that sales of QLACs must have a 90-day "free-look" period during which the annuitant can cancel the transaction entirely.[64] The new law also provides that a divorce occurring before payments begin does not affect the contract.[65]

B. Post-Mortem Options

Because of the deferred nature of a QLAC, there is a genuine concern among prospective buyers that they might pass away before the first payment is received.[66] To that end, SECURE 2.0 provides that a QLAC may include a "return of premium" provision whereby the difference between the premiums paid and the payments received by the annuitant and that person's spouse (if applicable) can be paid to a designated beneficiary.[67] That refunded premium amount is not, however, eligible for tax-free rollover treatment.[68]

Alternatively, if an annuitant's surviving spouse is the sole beneficiary after the annuitant passes away, the QLAC may pay that person an annuity of up to 100% of the QLAC's original annuity payment.[69] But if the annuitant passed away before the QLAC's payments began, the spouse's annuity must begin when it would have started for the original annuitant.[70] This circumstance might well be pertinent, because the starting date of a QLAC can be as late as age 85.[71]

62. Prior year-end value of $1,000,000 ÷ 26.5 = $37,736.

63. *Retirement Plan and IRA Required Minimum Distributions FAQs*, IRS (Feb. 28, 2024), https://www.irs.gov/retirement-plans/retirement-plan-and-ira-required-minimum-distributions-faqs [https://perma.cc/ARF5-TMJP].

64. SECURE 2.0 Act § 202(a)(4).

65. *Id.* § 202(a)(3). This provision applies retroactively to annuity contracts purchased on or after July 2, 2014. *Id.* § 202(c)(1)(B).

66. *See* Treas. Reg. § 1.401(a)(9)-6, A-17(c)(4)(i), (ii) (2014); *see also* Hersh Stern, *QLAC Qualified Longevity Annuity Contract*, IMMEDIATEANNUITIES.COM (Mar. 22, 2024), https://www.immediateannuities.com/qlac-qualified-longevity-annuity-contract/ [https://perma.cc/Z67K-RQD8].

67. Treas. Reg. § 1.401(a)(9)-6, A-17(c)(4)(i), (ii) (2014).

68. *Id.* § 1.401(a)(9)-6, A-17(c)(4)(iii) (A), (B) (2014).

69. *Id.* § 1.401(a)(9)-6, A-17(c)(1)(i), (ii)(A) (2014).

70. *Id.* § 1.401(a)(9)-6, A-17(c)(1)(ii)(B) (2014).

71. *Id.* § 1.401(a)(9)-6, A-17(a)(2) (2014).

If someone other than a surviving spouse is the designated beneficiary, an annuity of up to the "applicable percentage" of the QLAC's original annuity payment may be paid to that person.[72] The "applicable percentage" depends on the difference in ages of the annuitant and the designated beneficiary, according to the life expectancy table that is in the original regulations.[73] According to that table, an age difference of three years, for example, has an "applicable percentage" of 88%, while an age difference of 20 years has an "applicable percentage" of only 25%.[74] Thus, if the QLAC provided a monthly annuity payment of $10,000 and the pertinent age difference is three years, the maximum monthly annuity paid to the surviving non-spouse beneficiary would be $8,800 (i.e., original annuity of $10,000 *x* 88%). Finally, if the annuitant passed away before the QLAC payments began, the annuity must start by the year following the annuitant's death.[75]

III. Charitable Gift Annuities

An important variation on the annuity theme presented in the preceding section is the charitable gift annuity, or CGA.[76] The principal difference between this arrangement and annuities generally is that after the annuitant (and a designated beneficiary, if applicable) passes away, any remaining funds go to a charitable organization rather than to the insurance company that issued the annuity contract.[77] Moreover, the charitable organization is designated in advance by the person who purchased the CGA.[78] Accordingly, many people find CGAs very attractive because these arrangements enable them to actualize their charitable inclinations, while receiving a steady stream of annual income for their life and possibly the life of a successor annuitant.[79]

72. *Id.* § 1.401(a)(9)-6, A-17(c)(2)(i), (ii)(A) (2014).
73. *Id.* § 1.401(a)(9)-6, A-17(c)(2)(iii)(D) (2014).
74. *Id.*
75. *Id.* § 1.401(a)(9)-6, A-17(c)(2)(ii)(B) (2014).
76. *See* I.R.C. § 501(m)(5).
77. *See id.*; *cf.* I.R.C. § 408(d)(8)(C).
78. *The Fundamentals of a Successful Charitable Gift Annuity Program*, AM. COUNCIL ON GIFT ANNUITIES (June 28, 2022), https://www.acga-web.org/donor-guide-to-gift-annuities [https://perma.cc/A7X3-XAQ8].
79. Joe Thiegs, *"SECURE Act 2.0" Offers New Opportunity for Charitable Gift Planning*, GREATER PUB. BLOG (Mar. 27, 2023), https://greaterpublic.org/blog/secure-act-2-0-offers-new-opportunity-for-charitable-gift-planning/ [https://perma.cc/P9CC-HBZ4].

At the same time, a CGA can relieve any latent concern that the annuitant might die prematurely and thereby forfeit a significant portion of their initial outlay of funds to the benefit of some insurance company for which they have no particular affection. Losing part of the initial investment is also a possibility with a CGA, of course, but now the prospective beneficiary of the annuitant's early demise is a charitable organization that the annuitant wants to support financially.

SECURE 2.0 encourages the purchase of a CGA by providing that a so-called Qualified Charitable Distribution (QCD) can fund the CGA.[80] Such distributions have been authorized since 2006 but have always been subject to several key restrictions.[81] First, only persons who are at least 70½ years old are eligible to make a QCD.[82] That odd age is when owners of retirement accounts must begin taking Required Minimum Distributions (RMD).[83] This beginning age for RMDs was changed by the SECURE Act to 72 years[84] and then changed again by SECURE 2.0 to age 73,[85] but it remains age 70½ for purposes of the CGA rules.

Second, a QCD must otherwise be eligible for a charitable contribution deduction.[86] Thus, the charity that receives the QCD must be a tax-exempt institution that is eligible to receive tax-deductible charitable contributions,[87] and the donor cannot receive any benefit from the charitable organization that is receiving the QCD.[88] SECURE 2.0 retains the first requirement—namely, that the charitable organization must otherwise be eligible to receive tax-deductible charitable contributions.[89] But this new legislation modifies the second requirement by allowing the donor of the QCD to receive the very significant personal

80. I.R.C. § 408(d)(8)(F)(i), added by SECURE 2.0 Act § 307(a).

81. *See id.* § 408(d)(8), added by Pension Protection Act of 2006, Pub. L. No. 109-280, § 1201(a), 120 Stat. 780, 1063–64.

82. *Id.* § 408(d)(8)(B)(ii).

83. *Id.* § 401(a)(9)(C)(i)(I).

84. SECURE 2.0 Act § 114(a).

85. I.R.C. § 401(a)(9)(C)(v)(I), added by SECURE 2.0 Act § 107(a). *See generally* Richard L. Kaplan, *Reforming the Taxation of Retirement Income*, 32 VA. TAX REV. 327, 357 (2012) (proposing that the age for RMDs to start should be changed to at least 74 in 2012 due to increased longevity since the starting age was first enacted).

86. I.R.C. § 408(d)(8)(C).

87. *Id.* § 170(a)(1), (c)(2).

88. *Id.* § 408(d)(8)(C).

89. *Id.* § 408(d)(8)(B)(i).

benefit of a CGA.[90] In effect, a taxpayer can now purchase a CGA by withdrawing funds from their retirement account via a QCD and avoid any federal income tax that would otherwise be owed when funds are withdrawn from a retirement account.[91] It should be noted that QCDs can be made only from an Individual Retirement Account (IRA), but taxpayers with other types of defined contribution retirement plans can rollover funds from their section 401(k), section 403(b), or section 457 plans into an IRA and then use that IRA to fund the QCD.[92]

An additional benefit provided by this new provision is that the QCD used to purchase the CGA can count toward satisfying the donor/annuitant's RMD.[93] In some cases, this distribution will satisfy the purchaser's RMD entirely, depending on the amount involved and how much the annuitant's RMD would otherwise be.

As is typical of SECURE 2.0, there are several major limitations and caveats, including:

- The opportunity to use a QCD to purchase a CGA can apply to *only one* taxable year.[94] In other words, this is a one-time-only option.
- The distribution cannot exceed $50,000,[95] although that amount will be adjusted for inflation periodically after 2023.[96] In 2024, it was $53,000.[97]
- The QCD that purchases the CGA counts toward[98] the annual $100,000 limitation for QCDs,[99] though that

90. *Id*. § 408(d)(8)(F)(i), added by SECURE 2.0 Act § 307(a). Other benefits, such as a free ticket to a gala, may not be provided, however. *See* Laura Saunders, *How to Donate to Charity, Get a Tax Break and Have Income for Life*, WALL ST. J. (Dec. 2, 2023, 5:30 AM), https://www.wsj.com/personal-finance/taxes/ira-charitable-gift-annuity-taxes-e8f95f62 [https://perma.cc/5AGD-HB7S].

91. I.R.C. § 408(d)(8)(F)(i).

92. *See* Sheldon R. Smith, *Qualified Charitable Distributions to Split-Interest Entities*, 179 TAX NOTES FED. 1797, 1798 (2023).

93. *See* STAFF OF JOINT COMM. ON TAX'N, 109th Cong., TECHNICAL EXPLANATION OF H.R. 4, THE "PENSION PROTECTION ACT OF 2006," AS PASSED BY THE HOUSE ON JULY 28, 2006, AND AS CONSIDERED BY THE SENATE ON AUGUST 3, 2006 JCX-38-06, 266 (2006).

94. I.R.C. § 408(d)(8)(F)(i)(I).

95. *Id.* § 408(d)(8)(F)(i)(II).

96. *Id.* § 408(d)(8)(G), added by SECURE 2.0 Act § 307(b).

97. I.R.S. Notice 2023-75, 2023-47 I.R.B. 1256, 1257.

98. *See* Thiegs, *supra* note 79.

99. I.R.C. § 408(d)(8)(A).

limitation will also be adjusted for inflation after 2023.[100] In 2024, it was $105,000.[101]

- The only allowable recipients of the CGA are the donor and that person's spouse;[102] no other persons can be designated as beneficiaries of a CGA purchased using a QCD.[103]
- The income interests in the CGA are nonassignable.[104]
- Payments from the CGA to the purchaser will be taxed as ordinary income in their entirety.[105] Payments from an annuity are generally bifurcated into non-taxable and taxable portions, with the non-taxable component representing a taxpayer's return of their original investment.[106] But SECURE 2.0 specifies that the QCD that was used to purchase the CGA is not included in the taxpayer's "investment in the [annuity] contract."[107] Accordingly, the pertinent tax exclusion[108] for the taxpayer's "investment in the contract" is zero, with the result being that each payment received by the CGA purchased using an IRA is taxable in full.[109]
- The payout term is the IRA owner's remaining life or a fixed term of no more than 20 years.[110]

Notwithstanding these various restrictions, the single most significant drawback is undoubtedly the dollar limitation.[111] Even the maximum CGA purchase of $50,000 paying—say 6%—would yield only $3,000 per year, which translates into $250 per month—clearly not

100. *Id*. § 408(d)(8)(G), added by SECURE 2.0 Act § 307(b).
101. I.R.S. Notice 2023-75, 2023-47 I.R.B. 1256, 1257.
102. I.R.C. § 408(d)(8)(F)(iv)(I).
103. *Id.* § 408(d)(8)(F)(iv)(II).
104. *Id*.
105. *Id.* § 408(d)(8)(F)(v).
106. *See id.* § 72(b)(1).
107. *Id*. § 408(d)(8)(F)(v)(II).
108. *Id*. § 72(b)(1).
109. *Id*. § 72(a)(1).
110. *See* Alan Gassman, *New Tax Law Rewards Charitable IRA Retirees With A $50,000 Income Tax Deferral Opportunity*, FORBES, (Dec. 30, 2022, 5:38 PM), https://www.forbes.com/sites/alangassman/2022/12/30/new-tax-law-rewards-charitable-ira-retirees-with-a-50000-income-tax-deferral-opportunity/?sh=33ad200a6c96 [https://perma.cc/QU69-QQJ9].
111. *See* I.R.C. § 408(d)(8)(F)(i)(II).

enough to provide much retirement income.[112] On the other hand, an annuitant could supplement this CGA with other CGAs, but the tax-favored treatment accorded by SECURE 2.0 applies only to CGAs purchased during any one year with a maximum purchase price of $50,000.[113] Though there has been no guidance to date, married couples who both have IRAs should be able to each utilize this new provision and thereby acquire CGAs with a combined purchase price up to $100,000.

The SECURE 2.0 provision[114] discussed here also applies to charitable remainder annuity trusts[115] and charitable remainder unitrusts,[116] but the intricate details of these other so-called "split-interest" entities are beyond the scope of this article. In any case, the additional expenses involved in establishing and managing such trusts (as well as filing the related tax forms) seriously diminish the likelihood of using these trusts in this context.[117] In contrast, many educational institutions will establish a CGA with a minimum investment of only $10,000,[118] although Harvard University requires $25,000.[119] CGAs are not limited to educational institutions, of course, and all manner of charitable organizations regularly offer their supporters CGAs.[120] But the point remains that the opportunity presented by this particular SECURE 2.0 provision is largely confined to CGAs as a practical matter.[121] This provision became effective in 2023.[122]

112. *See id*.
113. *See id.*
114. *Id.* § 408(d)(8)(F)(i), (ii)(I)–(II).
115. *See id*. § 664(d)(1).
116. *See id*. § 664(d)(2).
117. *See* Smith, *supra* note 92, at 1800 ("[T]rust companies may not want to set up these trusts with assets valued at less than $100,000. . . .").
118. *See, e.g.*, *Charitable Gift Annuity—Immediate Payment*, UNIV. ILL. FOUND., https://uif.giftplans.org/index.php?cID=91 (last visited Mar. 5, 2024) [https://perma.cc/VGK9-MSS7]; *see also Charitable Gift Annuity: The Details*, YALE UNIV. OFF. PLANNED GIVING, https://www.yale.planyourlegacy.org/GIFTcharitg2.php (last visited Mar. 5, 2024) [https://perma.cc/G3TT-XUED].
119. *See Gifts That Pay You Income*, HARV. ALUMNI, https://alumni.harvard.edu/giving/planned-giving/pay-income (last visited Mar. 5, 2024) [https://perma.cc/QR22-WTTS]; *see also SECURE Act 2.0: How it Can Benefit You (and WashU)*, WASH. UNIV. ST. LOUIS, https://giving.wustl.edu/secure-act-2-0-how-it-can-benefit-you-and-washu/ (last visited Mar. 5, 2024) [https://perma.cc/F26Q-VY7H] (Washington University requires $25,000).
120. *See generally* I.R.C. § 501(m)(5) (defining the gift annuities without restriction to institutions).
121. *See* Gassman, *supra* note 110.
122. SECURE 2.0 Act § 307(c).

IV. Long-Term Care Insurance

As Americans live longer in retirement, the possibility increases that they will require long-term care at home, in an assisted living facility, or in a nursing home.[123] As I have explained elsewhere,[124] most of the expenses associated with long-term care are not covered by Medicare, the federal government's health care program for Americans aged 65 years and older.[125] Private supplemental insurance plans, usually called "Medigap" plans, similarly provide coverage for long-term care expenses only in very limited circumstances.[126] The government's health care program for poor people, known as Medicaid, does cover some long-term care expenses, primarily for nursing homes, but this program is restricted to persons with minimal income and assets, reflecting its means-tested poverty orientation.[127] Thus, paying for long-term care is largely a personal or family responsibility, though it is one that many retirees fail to consider.[128] Indeed, I have described this phenomenon elsewhere as "Retirement Planning's Greatest Gap."[129]

The federal government has chosen not to address this problem directly, but rather has allowed premiums for private long-term care insurance policies to be tax-deductible as medical expenses.[130] As noted elsewhere,[131] this tax treatment is subject to several significant limitations, not the least of which is that medical expenses are an "itemized" deduction.[132] At the present time, only 10% of American taxpayers itemize their deductions and many of them do not deduct medical expenses

123. *See* Richard L. Kaplan, *Cracking the Conundrum: Toward a Rational Financing of Long-Term Care*, 2004 U. ILL. L. REV. 47, 49–50 (2004).

124. *See id.* at 57–64; *see also* Richard L. Kaplan, *Medicare for All vs. Medicare As Is: Eight Key Differences*, 12 J. AGING L. & POL'Y 115, 132–34 (2021).

125. *See* Richard L. Kaplan, *Top Ten Myths of Medicare*, 20 ELDER L. J. 1, 11–13 (2012).

126. *See* Richard L. Kaplan, *Honoring Our Parents: Applying the Biblical Imperative in the Context of Long-Term Care*, 21 NOTRE DAME J. L., ETHICS & PUB. POL'Y 493, 509 (2007).

127. *See* Richard L. Kaplan, *Preferencing Nonmarriage in Later Years*, 99 WASH. U. L. REV. 1957, 1972–81 (2022).

128. Richard L. Kaplan, *Retirement Planning's Greatest Gap: Funding Long-Term Care*, 11 LEWIS & CLARK L. REV. 407, 411–13 (2007) [hereinafter Kaplan, *Retirement Planning's Greatest Gap*].

129. *Id.* at 407.

130. I.R.C. § 213(d)(1).

131. *See* KAPLAN, ELDER LAW NUTSHELL, *supra* note 34, at 140–42.

132. *See id*.

because of the tax code's requirement that such expenses must exceed 7.5% of a taxpayer's "adjusted gross income" to be deductible at all.[133]

An additional approach that the federal government has taken regarding this general issue has been authorizing state governments to create so-called "partnership" programs.[134] These programs allow residents of electing states to retain an amount of assets equal to the long-term care insurance plan benefits that they received and still qualify for Medicaid benefits if they would otherwise be eligible.[135] Such programs are entirely within the discretion of the various states and necessarily depend on the Medicaid qualification criteria that apply in those states to long-term care benefits.[136]

Given this sorry state of affairs, the SECURE 2.0 legislation now fashions a new option—namely, that retirement plan distributions used to pay for long-term care insurance are exempt[137] from the 10% penalty that applies to "early" distributions, i.e., distributions prior to attaining age 59½.[138] While this penalty relief is certainly worth something, the distributions used to pay for long-term care insurance remain subject to federal income tax and possibly to state income tax as well, depending on the tax laws of the individual states.[139]

Including such distributions in a taxpayer's gross income is only partially offset by that person's medical expense deduction for the reasons noted previously. Moreover, the amount of such expenses that can be deducted is further limited based on a taxpayer's age,[140] and any premiums in excess of the applicable limitation are disregarded in computing the relevant tax deduction. These limits are adjusted annually for inflation, but in 2024, the maximum tax deduction for long-term care insurance premiums was $1,760 for persons aged 51–60 years.[141] Even lower limits applied to younger taxpayers.[142]

Other important restrictions pertain to SECURE 2.0's penalty relief provision, such as:

133. I.R.C. § 213(a).
134. 42 U.S.C. § 1396p(b)(1)(C).
135. *See* Kaplan, *Retirement Planning's Greatest Gap*, *supra* note 128, at 445–48.
136. *See id*.
137. I.R.C. § 401(a)(39), added by SECURE 2.0 Act § 334(a).
138. *Id.* § 72(t).
139. Rev. Rul. 2019-19, 2019-19 I.R.B. 674, 674 (2019).
140. I.R.C. § 213 (d)(10).
141. Rev. Proc. 2023-34, 2023-48 I.R.B. 1287, 1293 § 3.28.
142. *Id.* (The maximum deduction for persons aged 41–50 in 2024 was $880 and for persons under age 41 was $470).

- Retirement plan distributions used for this purpose are limited to $2,500 per year,[143] though this limit will be indexed for inflation after 2024.[144]
- The amount of retirement plan distributions that are eligible for this penalty relief is further limited to 10% of the plan participant's "nonforfeitable accrued benefit" in the retirement plan.[145]
- This provision does not take effect until December 30, 2025, fully three years *after* its enactment.[146]
- Only long-term care insurance policies that meet the tax code's existing definition of "qualified long-term care insurance" are eligible for this favorable treatment.[147] On the other hand, most long-term care insurance policies being sold currently satisfy this definition.[148]

But the biggest concern in this context is that the penalty relief provision is completely irrelevant once a taxpayer reaches age 59½.[149] Many buyers of long-term insurance are already past that age, so any retirement plan distributions that they take are not subject to the "early distribution" penalty anyway, whether they are used to purchase long-term care insurance or for any other purpose.[150] In this context, it is noteworthy that almost half of first-time buyers of long-term care insurance are over age 59½ years old, according to the most recent data available.[151]

To be sure, this penalty relief might incentivize prospective retirees to buy long-term care insurance, but "early" acquisition of such

143. I.R.C. § 401(a)(39)(B)(i)(III).
144. *Id.* § 401(a)(39)(B)(ii).
145. *Id.* § 401(a)(39)(B)(i)(II).
146. SECURE 2.0 Act § 334(e).
147. I.R.C. §§ 401(a)(39)(C), 7702B(b).
148. *See 2022 Tax Deductible Limits News*, AM. ASS'N FOR LONG-TERM CARE INS. (Nov. 12, 2021), https://www.aaltci.org/news/long-term-care-insurance-association-news/2022-tax-deductible-limits-for-long-term-care-insurance [https://perma.cc/GVS8-PUUC].
149. I.R.C. § 72(t)(2)(A)(i).
150. *See* AM. ASS'N FOR LONG-TERM CARE INS., LONG-TERM CARE INSURANCE FACTS–DATA–STATISTICS–2022 REPORTS (2022), https://www.aaltci.org/long-term-care-insurance/learning-center/ltcfacts-2022.php#issue-age-21 [hereinafter LONG-TERM CARE 2022 REPORT] [https://perma.cc/E687-RYGD] (47% of first-time buyers were at least 60 years old).
151. *See id.*

insurance is already incentivized by two separate but significant characteristics of the long-term care insurance market.[152] First, medical qualification for such insurance is tied directly to a prospective buyer's health profile, which typically is more favorable the younger the buyer is.[153] Indeed, the percentage of applicants for long-term care insurance who were rejected for medical reasons was 30.4% for persons age 60–64, increasing to 38.2% for applicants age 65–69 and 47.2% for applicants age 70–74.[154] Second, premiums for long-term care insurance are highly dependent on a prospective buyer's age,[155] such that affordability is demonstrably greater the younger the buyer is when they apply for such insurance. Thus, the incentive to buy such insurance before age 59½ provided by the SECURE 2.0 legislation may encourage retirement plan participants to investigate long-term care insurance, but the incremental effect of this new provision is likely to be minimal.

V. Unused Funds in Section 529 College Savings Plans

Some families are concerned about having college savings plans authorized by tax code section 529 with funds remaining unspent after the named beneficiary of the plan has completed their college education.[156] This dilemma can result from various situations, including:

- The named beneficiary receives a full, or at least substantial, scholarship that pays for most or all of the beneficiary's "qualifying educational expenses," such as tuition, room, board, books, required fees, and certain equipment such as computers.[157]
- The named beneficiary attends a college that is less expensive than was expected when their section 529 plan was funded.[158]

152. *See* Kaplan, *Retirement Planning's Greatest Gap*, *supra* note 128, at 434–36.
153. *See id.* at 435–36.
154. *See* LONG-TERM CARE 2022 REPORT, *supra* note 150.
155. *See* Kaplan, *Retirement Planning's Greatest Gap*, *supra* note 128, at 434.
156. *See 529 College Savings Planning: What to Do With Leftover 529 Funds*, U.S. BANK: WEALTH MGMT., https://www.usbank.com/wealth-management/financial-perspectives/financial-planning/using-leftover-529-funds.html (last visited Mar. 5, 2024) [hereinafter *Leftover 529 Funds*] [https://perma.cc/C9CT-U5ZT].
157. I.R.C. § 529(e)(3)(A)(i), (B)(i).
158. *See Leftover 529 Funds*, *supra* note 156.

- The named beneficiary decides not to attend college or stops attending before fully utilizing the amount in their section 529 plan.[159]
- The named beneficiary passes away.[160]

Solutions to this dilemma already exist, of course. For example, the section 529 plan can be maintained in case the beneficiary decides to seek additional higher education at some future date.[161] Alternatively, the owner of the section 529 plan—typically, the beneficiary's parent—can simply change the plan's beneficiary to a different child or perhaps some other member of the extended family,[162] such as the parent's niece or nephew (i.e., the beneficiary's cousin).[163] Finally, the funds in the section 529 plan could simply be withdrawn and spent on any non-educational expenditure. This last option would, to be sure, subject the withdrawal to federal income taxes[164] and usually a penalty of 10% as well,[165] but it remains available even though it may be rather unappealing.

These alternatives notwithstanding, Congress decided to add another option, primarily because the prospect of unspent section 529 plan funds has—in the words of the Senate Finance Committee—"led to hesitating, delaying, or declining to fund 529s to levels needed to pay for the rising costs of education."[166] The new option allows the beneficiary of the section 529 plan to roll over any remaining funds to a Roth Individual Retirement Account on a tax-free basis.[167] This provision takes effect in 2024.[168]

As is typical for these manifestations of Congressional beneficence, this provision comes festooned with an array of caveats and limitations, including:

159. *Id.*
160. *Id.*
161. *Id.*
162. I.R.C. §§ 529(c)(3)(C)(i)(II), (e)(2)(B), 152(d)(2)(A)–(G).
163. *Id.* § 529(e)(2)(D).
164. *Id.* § 529(c)(3)(A), (B)(ii)(I).
165. *Id.* §§ 529(c)(6), 530(d)(4)(A).
166. S. FIN. COMM., *supra* note 4, at 6.
167. I.R.C. § 529(c)(3)(E)(i), added by SECURE 2.0 Act § 126(a).
168. SECURE 2.0 Act § 126(d).

- The section 529 plan in question must have been open for more than 15 years prior to the rollover into the beneficiary's Roth IRA.[169]
- The maximum amount that can be rolled over in any single year is that year's annual contribution limit for a Roth IRA,[170] which in 2024 was $7,000 ($8,000 if the beneficiary was at least 50 years old).[171] This limit, moreover, is reduced for this purpose by any other contributions made to the beneficiary's Roth IRA.[172] In any case, the annual limitations on Roth IRA contributions based on a taxpayer's "adjusted gross income" do not apply.[173]
- These rollovers cannot exceed a *lifetime* maximum of $35,000.[174]
- Contributions made to the section 529 plan within the preceding five years and the earnings on those contributions are not eligible for tax-free rollover treatment.[175]

But within these parameters, beneficiaries of section 529 plans with unused funds in their accounts can now utilize those funds to jumpstart, or at least build up, funds for their eventual retirement.[176]

VI. Emergency Withdrawals

Tax-incentivized retirement plans are intended to be long-term investment plans to finance an employee's eventual retirement.[177] But many employees find that these funds may be needed much earlier than retirement to cope with some unexpected financial emergency.[178] Congress responded to this concern in the SECURE 2.0 legislation by adding yet another exception to the 10% early distribution penalty on

169. I.R.C. § 529(c)(3)(E)(i).
170. *Id.* §§ 529(c)(3)(E)(ii)(I), 408A(c)(2).
171. I.R.S. Notice 2023–75, 2023–47 I.R.B. 1256, 1257.
172. I.R.C. § 529(c)(3)(E)(ii)(I) (parenthetical clause).
173. *Id.* § 408A(c)(3)(E), added by SECURE 2.0 Act § 126(b)(2)(B).
174. *Id.* § 529(c)(3)(E)(ii)(II).
175. *Id.* § 529(c)(3)(E)(i)(I).
176. *See id.* § 529(c)(3)(E)(i), added by SECURE 2.0 Act § 126(a).
177. *See id.*
178. *See* Sharon Epperson & Stephanie Dhue, *Amid Financial Stress, Workers are Asking for Emergency Savings Accounts as a Job Benefit, Survey Finds*, CNBC (Oct. 16, 2023, 3:48 PM), https://www.cnbc.com/2023/10/16/workers-ask-for-emergency-savings-accounts-as-job-benefit-survey-says.html [https://perma.cc/4PDC-G9F9].

withdrawals made prior to an employee's reaching age 59½ for emergency withdrawals.[179]

This change further differentiates employer-provided retirement plans from Social Security, in that Social Security is off-limits to employees who may want to use their accumulated benefits prior to retirement.[180] Such sequestering of Social Security for its intended purpose—namely, to finance an employee's retirement—is a feature of this program, though some employees undoubtedly see it as a bug.[181] In any case, participating in Social Security is mandatory, while enrolling in an employer's retirement plans is ultimately a matter of choice.[182] Accordingly, if the strictures that apply to employer-provided retirement plans are seen by employees as too onerous or too restrictive, employees may choose to limit their participation or even decline to participate in these plans at all. As a result, Congress is ever mindful that too many conditions on when and how an employee can access funds prior to retirement might discourage participation in these plans.[183]

Be that as it may, the new penalty exception applies to withdrawals that are made to meet "unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses."[184] An especially appealing aspect of this new provision is that the plan administrator "may rely on an employee's written certification that the employee satisfies the conditions . . . in determining whether any distribution is an emergency personal expense distribution."[185] Presumably, this self-certification mechanism will suffice vis-à-vis the Internal Revenue Service as well. Regulations are authorized to deal with instances when the plan administrator has "actual knowledge" that the employee's self-certification is incorrect, but otherwise, the process should be fairly seamless.[186]

179. I.R.C. § 72(t)(2)(I), added by SECURE 2.0 Act § 115(a).

180. KAPLAN, ELDER LAW NUTSHELL, *supra* note 34, at 273; *Receiving Benefits While Working*, SSA.GOV, https://www.ssa.gov/benefits/retirement/planner/whileworking.html (last visited Mar. 5, 2023) [https://perma.cc/53LP-ZTRN].

181. *See* PAUL S. DAVIES, CONG. RSCH. SERV., IF11824, SOCIAL SECURITY: WHO IS COVERED UNDER THE PROGRAM? 2 (2022); Epperson & Dhue, *supra* note 178.

182. DAVIES, *supra* note 181, at 1–2.

183. PEW CHARITABLE TRS., EMPLOYER BARRIERS TO AND MOTIVATIONS FOR OFFERING RETIREMENT BENEFITS 8–9 (2017).

184. I.R.C. § 72(t)(2)(I)(iv).

185. *Id.*

186. *Id.*

The potential for unscrutinized self-serving testimonials to secure these withdrawals, however, is checked by two major limitations. First, the provision in question abates the early distribution penalty only.[187] The withdrawn funds remain subject to federal income taxes and possibly state income taxes as well, depending upon the employee's state of residence.[188] Abating the penalty is definitely helpful, but it is not as helpful as exempting the withdrawal from applicable income taxes, which the new provision most certainly does not do.

Second, the amount that can be withdrawn under this penalty exception cannot exceed $1,000 per calendar year.[189] Moreover, even this limit is restricted to the excess of an employee's "nonforfeitable accrued benefit" in the retirement plan over $1,000.[190] Thus, if the employee's "nonforfeitable accrued benefit" in the fund, for example, is $1,700, the maximum emergency withdrawal would be only $700. An employee may choose to repay the withdrawal within three years,[191] though there is no requirement to do so.[192] The withdrawn funds, in other words, do not constitute a loan. That said, no further distributions are allowed pursuant to this provision unless the emergency withdrawal has been repaid during the next three years[193] or the employee's subsequent contributions to the plan are at least equal to the unpaid amount.[194] In many circumstances, therefore, the effective lifetime cap for such withdrawals will be $1,000. This provision took effect in 2024.[195]

An unrelated provision of SECURE 2.0 takes a different approach to funding emergencies: employers have the option—but not any obligation—to offer emergency savings accounts to their employees.[196] An employer may automatically opt its employees into such accounts with a maximum employee contribution of $2,500.[197] Employee contributions to these accounts are made on an after-tax basis with an annual matching cap of no more than $2,500.[198] Upon leaving the employer, an

187. *See id.*
188. *See id.* § 72(t)(1).
189. *Id.* § 72(t)(2)(I)(iii).
190. *Id.*
191. *Id.* § 72(t)(2)(H)(v), (I)(vi).
192. *See id.* § 72(t)(2)(I)(vii).
193. *Id.* § 72(t)(2)(I)(vii)(I).
194. *Id.* § 72(t)(2)(I)(vii)(II).
195. SECURE 2.0 Act § 115(c).
196. *Id.* § 127(a) (codified as 29 U.S.C. § 1002(3)(45)).
197. *Id.* § 334(a).
198. *Id.*

employee may cash out their emergency savings account or roll it into a Roth-type retirement account.[199] These accounts have numerous complications that are beyond the scope of this Article, and it remains to be seen whether such accounts will become popular.

VII. Conclusion

SECURE 2.0 included a surprising array of additional features to existing employer-provided retirement accounts. Some of these options, such as those dealing with deferred annuities and long-term care insurance, have a clear connection to the basic goal of these accounts—namely, to finance a plan participant's retirement.[200] Other provisions, such as the rollover of unused educational savings accounts or occasional emergency withdrawals, are related to this basic goal much more tenuously, if at all.[201] Congress thus continues a trend to make employer-provided retirement accounts serve an ever-wider range of purposes,[202] thereby hastening their transformation into all-purpose savings accounts. Whether plan participants will choose to avail themselves of these new options remains very much to be seen, but one can certainly anticipate that future legislative efforts in this area will continue to see these accounts as the mechanism of choice to accomplish an increasing portfolio of Congressional objectives.

199. *Id.*
200. *See supra* Sections II & IV.
201. *See supra* Sections V & VI.
202. *See generally* Richard L. Kaplan, *Retirement Funding and the Curious Evolution of Individual Retirement Accounts*, 7 ELDER L.J. 283, 292–303 (1999) (describing penalty relief provisions for IRA distributions that finance down-payments for first-time homebuyers, higher education expenses, and medical expenses).