



THE SECURE ACT BECOMES LAW!

January 31, 2020

Just before Christmas, Congress passed and President Trump signed into law the federal budget appropriations legislation for the 2020 fiscal year. Among the provisions of the final legislation was the Setting Every Community up for Retirement Enhancement Act (or "SECURE Act"), which is the most comprehensive legislation to affect the retirement plan industry in over a decade. The SECURE Act contains many changes to qualified retirement plans which are intended to promote retirement savings and increase retirement security.

We have summarized the key provisions relating to qualified plans and the effective dates (some as early as January 1, 2020), below:

Pooled Employer Plans: One of the most substantial changes made by the SECURE Act is allowing for Pooled Employer Plans (PEPs), also referred to as "open multiple employer plans" or "open MEPS." PEPs are permitted for plan years beginning after December 31, 2020. PEPs may be adopted by 2 or more unrelated adopting employers and do not require the adopting employers to share any common characteristics. A PEP must be sponsored by a "Pooled Plan Provider," who must be the named fiduciary for the PEP and the ERISA Section 3(16) plan administrator. A Pooled Plan Provider, which is generally expected to be a financial services company, insurance company or third party administrator, must also register with the IRS and/or DOL. The PEP adopting employers will be responsible for selecting and monitoring the Pooled Plan Provider.

A PEP will only require one single plan document, one Form 5500, and one independent plan audit which will arguably provide for cost savings. Further guidance from the IRS and DOL is expected in the coming year.

Long-Term Part-Time Employees in 401(k) Plans: The Act requires that 401(k) plans permit certain long-term part-time employees to participate for purposes of elective deferrals. This group of part-time employees includes an employee who does not satisfy a 401(k) plan's normal eligibility requirements, but who completes 3 consecutive, 12-month periods of service with at least 500 hours of service per period. A plan is not required to allow such a participant to be eligible to receive employer contributions, such as nonelective and matching contributions, and the part-time employees may be excluded from nondiscrimination, coverage, and top-heavy testing. This new rule applies to plan years beginning after December 31, 2020, but 12-month periods of service prior to January 1, 2021 are not required to be counted, therefore further delaying the application of the new rule.

Penalty Tax Free Withdrawals for Childbirth/Adoption: The Act provides for a waiver of the 10% penalty tax under IRC Section 72(t) for withdrawals from 401(k), 403(b) and governmental 457(b) plans of up to \$5,000 for expenses related to childbirth or adoption. The new waiver applies to distributions made after December 31, 2019.

Disclosure of Lifetime Income Illustration on DC Plan Statements: The Act requires a lifetime income illustration on participant benefit statements for defined contribution plans at least once during any 12-month period. The illustration must show the monthly payments that a participant would receive if their total account balance was converted to a lifetime income stream (qualified joint and survivor annuity and a single life annuity). The DOL will provide a model disclosure. The new disclosure requirement is effective for benefit statements issued 12 months after the release of DOL guidance and the model disclosure.

Modifications to RMD Rules: The Act extends the age at which Required Minimum Distributions (RMDs) must commence from age 70½ to age 72. This change will be effective for RMDs made for individuals who attain age 70½ after December 31, 2019. Therefore, a participant who attains age 70½ after December 31, 2019 will not be required to commence RMDs until April 1st of the year following the year in which the participant attains age 72.

Prior to the Act, upon the death of a participant, a non-spouse beneficiary was permitted to receive RMDs over the beneficiary's life expectancy. The Act modifies the RMD rules to generally require that all accounts under defined contribution plans be distributed within 10 years of the death of the plan participant for certain non-spouse beneficiaries. However, the new 10-year requirement generally is not applicable to an "eligible beneficiary", which is defined as a surviving spouse, a minor child, a disabled or chronically ill individual, or an individual who is not more than 10 years younger than the participant or IRA owner. This rule is generally applicable to distributions resulting from a participant's death after December 31, 2019.

Modifications to Safe Harbor Nonelective Contribution Rules: Effective for plan years beginning after December 31, 2019, an annual safe harbor notice is no longer required for non-elective contribution safe harbor 401(k) plans. However, the annual safe harbor notice continues to be required for matching contribution safe harbor 401(k) plans.

Additionally, a 401(k) plan may be amended mid-year to become a safe harbor plan with a 3% nonelective contribution for the plan year as long as the amendment is adopted at least 31 days before the end of the plan year. A plan may be amended to become a safe harbor plan with a 4% nonelective contribution as long as the amendment is adopted no later than the end of the following plan year (i.e., the same deadline for distributing excess contributions).

Additional Changes to Qualified Plan Rules and Requirements:

(Effective for plan years beginning after December 31, 2019, unless otherwise stated)

- **Increased QACA Deferral Maximum:** The percentage cap on default automatic contributions under qualified automatic contribution arrangement (QACA) safe harbor 401(k) plans is increased from 10% to 15% of compensation.
- **Extended Adoption Due Date for New Plans:** The deadline for adopting a new qualified retirement plan is increased from the end of the taxable year to the due date of the tax return (including extensions) for the taxable year. (Applies to plans adopted for tax years beginning after December 31, 2019.)
- **Frozen and Closed DB Plan Nondiscrimination Rules:** The legislation modifies and provides relief from the nondiscrimination rules for certain frozen or closed defined benefit plans (effective on the date of legislation enactment).
- **Increased Penalties for Late Form 5500:** The penalty for failure to file Form 5500 is increased to \$250 per day, not to exceed \$150,000, and penalty for failure to file Form 8955-SSA is increased to \$10 per participant per day, not to exceed \$50,000 (applies to forms required to be filed after

- December 31, 2019).
- **Portability of Lifetime Income Options:** The legislation provides for portability (i.e. trustee-to-trustee transfer to another employer sponsored retirement plan or an IRA) of annuity or lifetime income options from 401(k), 403(b), and governmental 457(b) plans if the lifetime income investment is no longer authorized to be held as an investment option under the plan.
 - **No Plan Loans via Credit Cards:** Qualified plans are prohibited from making participant loans through a credit card type arrangement (effective on the date of legislation enactment).

Plans Maintained by Church Controlled Organizations: The Act clarifies which individuals may be covered by plans maintained by church controlled organizations to include: duly ordained, commissioned, or licensed ministers, regardless of the source of compensation; employees of a tax-exempt organization, controlled by or associated with a church or a convention or association of churches; and certain employees after separation from service with a church, a convention or association of churches, or an organization described above.

Termination of 403(b) Plan Custodial Accounts: The Act helps facilitate employers terminating 403(b) plans that hold plan assets in custodial accounts by directing the Treasury to issue guidance no later than 6 months after enactment that permits distribution of individual custodial account assets in-kind to participants in the event of 403(b) plan termination. The distributed custodial accounts would continue to be maintained on a tax-deferred basis as an individual 403(b) custodial account until paid out.

Disaster Relief: The 2020 budget bill included a provision that qualified disaster distributions from retirement plans up to \$100,000 are exempt from the 10% Section 72(t) penalty tax. The qualified disaster distributions may be rolled back into the retirement plan within 3 years, or they may be included in the participant's taxable income ratably over a three-year period beginning in the year of distribution. The relief applies to individuals who suffered economic losses in a qualified disaster area beginning after 2017 and ending 60 days after enactment. Additionally, the participant loan limits for these individuals is increased from \$50,000 to \$100,000 for the 180-day period beginning on the date of enactment.

Remedial Amendment Period: For provisions in the Act that require a plan amendment, the Act provides for a remedial amendment period for most plans until the end of 2022. Therefore, plan sponsors may operate their plans in accordance with the various provisions of the Act immediately upon the applicable effective dates, discussed above, but generally do not have to adopt amendments to reflect the legislation until the end of 2022. However, governmental plans and collectively bargained plans have an extended remedial amendment period that closes at the end of 2024.

If you have questions or would like additional information, please contact a member of our Employee Benefits and Executive Compensation Practice Group.



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