

SECURE Act - Setting Every Community Up for Retirement Enhancement

On December 20, 2019, the SECURE Act was signed into law. This new tax act introduces significant changes and enhancements to retirement plans. Many of the provisions of the SECURE Act became effective for plan years beginning after December 31, 2019, which for most plans, means those provisions are already in effect. Typically, the government provides some lead time before laws are implemented, giving service providers sufficient time to program their databases to accommodate the new laws. While many of the new provisions are welcome enhancements, providing immediate availability of the changes may prove to be a challenge for recordkeepers. ***Please pay close attention to the communications from your service provider to keep abreast of the timelines for implementing various provisions.***

The deadline for adoption of the SECURE Act Amendment is by the end of the first plan year beginning on or after January 1, 2022 (2024 for collectively bargained plans and governmental plans). Until that time, much needed additional guidance regarding the above changes will be issued and we will provide updates as they become available. Below is an overview of items we feel could be of interest to our clients:

- The “required beginning age” for ***required minimum distributions*** is changed from age 70½ to age 72 for individuals who attain age 70½ after December 31, 2019.
- The new law requires that ***inherited defined contribution accounts or IRAs be fully distributed within 10 years*** following the year of a participant’s death (was previously 5 years). However, it also eliminates the option for non-spouse designated beneficiaries to receive distributions over their life expectancy. This eliminates what is commonly known as the “stretch IRA.”
 - There will be exceptions to the life expectancy cap for surviving spouses, minor children (who must take a distribution within 10 years after attaining “majority”), disabled or chronically ill persons, or other beneficiaries not more than 10 years younger than the participant.
 - Effective for distributions with respect to employees who die after December 31, 2019 (with a delayed effective date for certain Union plans).
- New type of ***withdrawal option is available from defined contribution plans for birth or adoption***. The early withdrawal penalty does not apply (tax still applies).
 - Permits withdrawal of up to \$5,000 (per individual) within one year after birth or adoption of a qualifying child.
 - Provides an option to “repay” the qualified birth or adoption distributions. The repayment would be treated like a rollover. At this point, there is no stated deadline on the repayment option.
 - Delay in availability of this provision is very likely due to the need for additional guidance. As an example, there is no guidance regarding whether or not the 20% mandatory tax withholding applies.
- ***Notice requirement for plans with safe harbor non-elective contribution features is eliminated***. However, the notice requirement is still needed if the plan is making a safe harbor non-elective contribution and is also funding an Employer Match.
- An existing 401(k) plan that is subject to testing on elective deferrals can ***convert to a 3% Safe Harbor Non-Elective Contribution plan if amended more than 30 days before the current plan year end***.
 - After the plan year end, a plan can also amend to add a safe harbor non-elective contribution feature as late as the last day of the next following plan year. However, the contribution must be at least 4%.
- Part-time employees that work less than 1,000 hours per year can still qualify for plan entry if they have attained age 21 and complete more than 500 hours of service in three consecutive years of service. This new

requirement is intended to provide *long-term part-time employees* with an opportunity to make 401(k) deferrals. Employees who are eligible due to the 3 year/500 hour requirement can be excluded from non-discrimination, coverage and top heavy testing. Additionally, these employees are not required to receive Employer contributions. Tracking of hours for purposes of the 500 hour requirement begins as of January 1, 2021. So, the earliest entry date for long-term part-time employees under this new 500 hour rule will be January 1, 2024.

- ***Qualified Automatic Contribution Arrangement (“QACA”) escalation limit increased from 10% to 15%*** after the first year
- ***Small employer tax credit of \$500 per year for up to 3 years is available for plans that add an eligible automatic contribution arrangement***
- ***Small employer tax credit for start-up plans*** – the tax credit of \$500 will increase to as much as \$5,000 for the first three years after adopting a plan and covers 50% of plan start-up costs and administration fees. This credit applies to employers with less than 100 employees in the preceding year.
 - **Credit Calculation** = The greater of \$500 OR \$250 for each non-highly compensated employee who is eligible to participate in the employer sponsored plan (capped at \$5,000). For example, a company with 18 eligible non-highly compensated employees could receive a credit of up to \$4,500 (18 employees x \$250/employee).
- ***Pension plans, including money purchase pension plans (or 401(k) plans with transferred money purchase assets), and governmental 457(b) plans can be amended to permit in-service withdrawals at age 59.5.***
- A future enhancement is that ***participant statements will need to include a lifetime income disclosure***. This annual disclosure is intended to illustrate the monthly payment a participant would receive if his/her account balance was used to provide a lifetime stream of income at retirement. The Department of Labor needs to issue additional rules and develop a model before this option can be implemented.
- If a plan wishes to ***discontinue a lifetime income investment***, plan can be amended to offer participants the opportunity to rollover to an IRA even if the participant does not otherwise qualify for a distribution.
- ***Form 5500 late filing penalties*** increase tenfold to \$250 per day up to a maximum of \$150,000.
- ***Consolidated Form 5500*** permitted for plans with the same trustee, same fiduciary, same plan year, same investment options.
- ***Limited Fiduciary safe harbor for plans wishing to offer an annuity investment option***

Please do not hesitate to contact your Plan Consultant with any questions regarding these provisions.