



SECURE Act impacts employer plans

TAX ALERT | December 20, 2019

On Dec. 19, 2019, Congress passed the Setting Every Community Up for Retirement Enhancement Act, known as the SECURE Act, as part of the appropriations bills that will fund the federal government through September 2020. The President is expected to sign the SECURE Act into law. The SECURE Act makes a number of important changes affecting retirement benefits in qualified retirement plans and in IRAs for both the employers that sponsor qualified retirement plans and for individuals who participate in such plans and in IRAs. This SECURE Act summary focuses on the Act's potential effect on employers and plan sponsors. [Read a summary of the SECURE Act's effects on individuals.](#)

The SECURE Act changes that potentially affect employers and plan sponsors include:

Increase the age of required minimum distributions

The SECURE Act increases from 70½ to 72 the age at which individuals participating in a qualified retirement plan or IRA must commence required minimum distributions. This change takes into account the increase in life expectancies since the required minimum distribution rules were originally enacted. Plans are not required to make mandatory distributions until the year after the year in which a participant attains age 72.

This provision is effective for distributions required to be made after Dec. 31, 2019 for plan participants and IRA owners who reach the age 70 ½ after Dec. 31, 2019. The Internal Revenue Service is expected to provide guidance on when qualified retirement plans must be amended for this change.

Repeal of the maximum age prohibition for IRA contributions

The SECURE Act repeals the prohibition on individuals who turn 70 ½ from contributing to a traditional IRA. This provision is effective for contributions made for tax years beginning after Dec. 31, 2019.

Changes to lifetime income options

The SECURE Act now permits the transfer of a lifetime income investment contract from one defined contribution plan to another defined contribution plan, or to an IRA, by direct trustee-to-trustee transfer in the event that the transferring plan no longer authorizes the investment contract. The Act's addition of a new permissible distributable event allows participants to keep their investment contract and avoid surrender charges. A lifetime income investment is a form of plan benefit paid over the life expectancy of a plan participant

or over the life expectancies of a participant and beneficiary (e.g. an annuity contract). This provision is effective for plan years beginning after Dec. 31, 2019.

The SECURE Act also includes a safe harbor for plan fiduciaries in selection of insurer for a guaranteed retirement income contract. Lifetime income disclosure statements are now required once during any 12-month period. The SECURE Act directs the Secretary of Labor to develop a model disclosure with the required information.

Part-time employees included in retirement plans

The SECURE Act now prohibits employers from excluding part-time employees from participation in the employer's defined contribution plan, provided that such employees have been credited with at least 500 hours of service per year for at least three consecutive years and reached the age of 21 by the end of the three-year period. The provision is effective for plan years beginning after Dec. 31, 2020.

Credits for small employer plans

The SECURE Act provides a significant increase in the maximum dollar limit allowed for the tax credit small businesses can use for up to 50% of its qualified costs of setting up a retirement plan. The new dollar limit may be as high as \$5,000, up from \$500. Additionally, the Act provides a tax credit of up to \$500 per year to employers that include automatic enrollment in their 401(k) plans and SIMPLE IRAs. The automatic enrollment tax credit is also available to employers that convert an existing plan to an automatic enrollment plan. Both of these credits are effective for tax years beginning after Dec. 31, 2019.

Increase cap on automatic salary deferral

The SECURE Act increases , from 10% to 15%, the maximum amount of an employee's compensation that can be automatically deferred under a plan with an automatic enrollment safe harbor, beginning after the employee's first plan year. This provision is effective for plan years beginning after Dec. 31, 2019.

Modification on what type of payments are considered compensation for IRA purposes

The SECURE Act provides that the amount of stipends and non-tuition fellowship payments received by graduate and postdoctoral students will be considered as compensation in determining IRA contribution limitations. This provision is effective for taxable years beginning after Dec. 31, 2019.

Additionally, "difficulty of care payments" to healthcare workers will also be considered compensation for determining retirement contribution limitations under the SECURE Act. This provision is effective the date of enactment with a special provision for certain defined contribution plans for plan years beginning after Dec. 31, 2015.

Changes to multiple employer plans

The SECURE Act amends the Internal Revenue Code to revise requirements for multiple employer pension plans and pooled plans. The “bad apple” rule, which provides that if one employer in a multiple employer retirement plan fails then the entire plan fails, has been eliminated. The changes to multiple employer plans requirements also make it easier for employers who are not in a common industry to form “pooled” retirement plans.

Changes to Safe Harbor 401(k) Rules

The SECURE Act now permits a mid-year amendment to the non-elective employer contribution percentage for the plan year under a safe harbor 401(k) plan, provided that the amendment occurs before the 30th day before the close of the plan year. An amendment made within 30 days before the plan year close is still allowed, but only if the amendment provides for a non-elective contribution of at least 4% of compensation for all eligible employees and the plan is amended no later than the last day for distributing excess contributions for the plan year. This provision is effective for plan years beginning after Dec. 31, 2019.

Prohibition on making loans through credit cards

Under the SECURE Act, qualified retirement plans are no longer permitted to extend plan loans in the form of a credit card or similar arrangement. The purpose of the provision is to ensure that plan loans are not used for routine or small purchases. This provision is effective for loans made after the date of enactment.

Consolidated Form 5500

Under the SECURE Act, all members of a group of plans are now permitted to file a single consolidated Form 5500 so long as a set of conditions are met. The conditions include: the plans must be defined contribution plans; have the same trustee; the same fiduciary; the same administrator; use the same plan year; and provide the same investments or investment options to plan participants. This provision is effective for returns required to be filed with respect to plan years beginning after Dec. 31, 2019, and annual returns for plan years beginning after Dec. 31, 2021.

Changes to nondiscrimination testing

The SECURE Act modifies the nondiscrimination rules for closed or “frozen” defined benefit pension plans. Closed plans may now permit existing participants to continue to accrue benefits, thus protecting older plan participants.

Extension of time to adopt an employer-sponsored retirement plan

The SECURE Act provides that employers that adopt a qualified retirement plan after the close of a taxable year but before the filing due date may be treated as in effect as of the last day of the taxable year. This provision is effective for plans adopted for taxable years beginning after Dec. 31, 2019.

Additional Changes

The SECURE Act also makes the following changes:

- Provides for the issuance of Treasury guidance on distributions upon the termination of a 403(b) custodial account;
- Clarifies the definition of "church plan" participants;
- Includes an exception from the 10% early distribution rule for distributions on account of a birth or adoption;
- Reinstates certain income exclusion rules for volunteer firefighters and emergency medical responders;
- Expands permissible expenses under a section 529 education savings account; and
- Increases "failure to file" penalties and penalties for failing to file Form 5500.

Employers will need to spend some time reviewing the above changes with their retirement plan advisors to determine the changes needed to plan documents as well as internal company policies and procedures.

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