SECURE Act Summary and Important Dates

The Setting Every Community Up for Retirement Enhancement (SECURE) Act was signed into law on December 20, 2019, following bipartisan support from Congress. SECURE contains nearly 30 provisions that will have a direct impact on retirement plans. Below you will find a summary of these provisions and a timeline to keep in mind.

PRIORITY	PROVISION	TIMING
Required	MUST include the annuitized amount of an individual's account balance on a statement at least once per year.	Does not take effect until regulations are finalized, which might not occur until 2021.
Required	Required Minimum Distribution age increases to 72 from 70 ½	Applicable for individuals that attain age 70 ½ after 12/31/19
Required	Part-time employees that work 500 hours or more for three consecutive years must be treated as eligible to participate in the plan (and are 21 years of age or older). However, no employer contributions required for this group.	Effective date of provision is for plan years beginning after 12/31/20 and hours prior to 1/1/21 do not count. Regulations will be needed for this provision.
Optional	Auto Enroll Safe Harbor Plans (QACA) may increase the Auto Escalation cap to 15% of pay from the current 10% cap.	Effective immediately; however, regulations will most likely be drafted on this rule.
Optional	To encourage the availability of lifetime income options on plan menus, the law expands the fiduciary safe harbor for selection of an annuity provider that satisfies certain conditions.	Effective immediately; however, regulations will most likely be drafted on this rule.
Optional	Withdrawals of up to $5,000 may be provided to cover expenses associated with birth or adoption of child.	Effective for distributions after 12/31/19; however, should confirm timing with plan recordkeeper.
Optional	SECURE amends rules pertaining to multiple employer plans to enable more small businesses to adopt this type of plan. The new plans will be called Pooled Employer Plans.	The rules take effect in 2021. Regulations will be necessary.
Optional	Currently, a plan sponsor may elect to adopt a safe harbor plan design with nonelective contributions as late as 30 days prior to close of the plan year. You can now adopt within the 30 days prior to the close of the plan year through the next plan year, but an additional 1% non-elective contribution is required.	May implement for plan years beginning after 12/31/19; however, regulations will most likely be drafted on this rule.

PLEASE NOTE: SECURE includes a significant increase in penalties for failure to provide 1099-R, 8955-SSA, and timely file Form 5500, effective for notices and filings after 12/31/19.

SECURE includes language designed to ensure amendments to plan documents are most likely not necessary until at least the end of the 2022 plan year; however, plans will need to follow new mandatory provisions from an operational standpoint immediately.

Source: American Retirement Association

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Open Multiple Employer Plans (Pooled Employer Plans)

Among several other MEP-related provisions, the Act provides for the establishment of defined contribution Open MEPs – referred to as "Pooled Plans" – which will be treated as single ERISA plans. Under current law, where a plan is sponsored by a group of employers that are not under common control, the employers must have certain "commonality" of interests, or the arrangement may be treated as multiple component plans for ERISA purposes. Even though the recent Department of Labor regulation on "Association Retirement Plans" relaxed the commonality requirement significantly, a limited commonality requirement nonetheless remained. As a result, Open MEPs (which are generally offered by service providers and open to any employer who wishes to adopt them) remained subject to potential treatment as multiple ERISA plans. In a move largely cheered by the industry, the SECURE Act goes further by abolishing the commonality requirement entirely.

Part-Time Employee Eligibility for 401(k) Plans

Sponsors of 401(k) plans will be required to allow employees who work at least 500 hours during each of three consecutive 12-month periods to make deferral contributions — in addition to employees who have satisfied the general "one year of service" requirement by working at least 1,000 hours during one 12-month period. Long-term part-time employees eligible under this provision may be excluded from eligibility for employer contributions, and the Act provides very significant nondiscrimination testing relief with respect to this group. Nonetheless, this is an example of a provision that – while positive in the sense of encouraging additional retirement plan coverage – will nonetheless create new recordkeeping and administrative challenges.

Auto-Enrollment Escalation Limits Change

Current law provides for a 10% safe harbor automatic enrollment escalation limit. Under the new law, the 10% cap applies for the first year the employee is enrolled, and then increases 15% after that year. This provision is in effect for plan years beginning in 2020.

Required Minimum Distributions (RMDs)

The age at which required minimum distributions must commence will be increased to 72 from 70 1/2. This is another example of a helpful change that will nonetheless lead to additional compliance questions.

Increased Tax Credits

The cap on start-up tax credits for establishing a retirement plan will increase to up to $5,000 (depending on certain factors) from $500. Small employers who add automatic enrollment to their plans also may be eligible for an additional $500 tax credit per year for up to three years.

Safe Harbor 401(k) Enhancements

Employers will have more flexibility to add non-elective safe harbor contributions mid-year. Additionally, the Act eliminates the notice requirement for safe harbor plans that make non-elective contributions to employees. The automatic deferral cap for plans that rely on the automatic enrollment safe harbor model (known as the "qualified automatic contribution arrangement" or "QACA" safe harbor) also will increase to 15% from 10%.

Non-Discrimination Testing for DB Plans

If certain requirements are met, the SECURE Act offers non-discrimination testing relief to frozen defined benefit plans if certain requirements are met. The provision will help to resolve the long-standing issue where some soft frozen defined benefit (DB) plans struggle to pass compliance testing. The provision is effective on the date of enactment, there is an option for employers to choose to apply the rules to plan years beginning after 2013.

Tax Credits for Plan Sponsors

Additional tax credits are available to employers with up to 100 employees to help offset the cost of starting up a retirement plan and an additional tax credit is available to plans with an automatic enrollment features. These provisions are in effect for tax years beginning in 2020.

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Distribution Rule Changes for Beneficiaries (Eliminating Stretch IRAs)

Under current law, the period of time a benefit must be paid to a beneficiary after the participant's death depends on whether death occurred before or after retirement payments began. Under the new law, however, whether before or after benefits have begun, if there are benefits due under a DC or IRA after the participant's death, it must be paid within 10 years if the beneficiary is not defined as an "eligible designated beneficiary."

An eligible designated beneficiary is defined as one of the following at the employee's date of death:

- Spouse,
- Minor child,
- Disabled individual,
- Chronically ill individual, or
- An individual who is not more than 10 years younger than the employee

This is effective for deaths beginning in 2020; however, there may be a later effective date for collectively bargained governmental plans. This excludes irrevocable elections that are already in place prior to December 20, 2019.

Adoption or Birth Withdrawals

Under the new law, participants may be allowed to take penalty-free withdrawals from a DC plan or IRA for any qualified birth or adoption. These distributions would not be subject to the 10% additional tax on early distributions. Also, distributions for this purpose are not eligible for rollover and may not exceed $5,000 per occurrence. This limit applies across all plans of the controlled group. Participants have the option to repay the distribution. This provision is in effect for distributions beginning in 2020.

Portability for Guaranteed Lifetime Income Investments

DC plans that provide an investment option with a guaranteed lifetime income feature may allow participants to complete a trustee to trustee transfer of those funds even if distributions are not otherwise allowed in the event the plan closes that investment option. The transfer must occur within 90 days of the investment closing and is effective for plan years beginning in 2020.

In-Service Distributions

Current law allows in-service distributions for Defined Benefit and governmental 457(b) plans at age 62. The new law will allow in-service distributions at 59 ½. This may be effective in 2020 for plans that allow in-service distributions.

Disaster Relief

Individuals who have a primary residence within a federally declared disaster relief area and suffered an economic loss as a result of that disaster may be eligible for tax relief for qualified disaster distributions. Enhanced retirement plan loans may also be available. The features of an enhanced loan include delayed loan repayments for up to one year ad an increased maximum loan amount of $100,000. This provision is in effect for individuals who suffered losses in a qualified disaster areas beginning in 2018 and ending 60 days after the enactment.

403(b) Plan Termination

Plan sponsors of 403(b) plans may terminate the custodial account by transferring funds to an individual custodial account in kind to a participant or beneficiary that will maintain the 403(b) plan features at the point of termination. The DOL is expected to give guidance in the next six months, which is expected to be effective retroactively to the 2009 tax year.

Source: Drinker Biddle, Principal

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