Legislative and regulatory bulletin

1Q 2020

Congress enacts major retirement plan legislation

On December 20, 2019, the president signed into law the Setting Every Community Up for Retirement Enhancement (SECURE) Act, the most significant retirement plan legislation in 13 years.[1] The SECURE Act—which was attached to an appropriations bill that Congress needed to pass to avert a government shutdown—makes far-reaching changes to the laws governing retirement plans. It will affect employers that currently sponsor retirement plans and encourage those without plans to set them up. It also impacts plan participants, individual retirement account (IRA) holders and their beneficiaries, and even includes a provision that expands the uses of Section 529 college savings plans.

Many of the Act's provisions are effective in 2020. Below we summarize some of the new law's key provisions, followed by a chart that shows the plans or accounts to which they apply, along with their effective dates.

"Open" multiple employer plans (MEPs). The Act will allow a financial institution, consultant, recordkeeper or other firm to offer a single defined contribution (DC) plan that several unrelated employers can join. By banding together in a type of MEP that the Act calls a "pooled employer plan," employers may enjoy reduced costs due to economies of scale. Because professional service providers will likely be performing many of the tasks associated with operating a DC plan, participating employers can also enjoy reduced fiduciary liability. In addition, the Act addresses the so-called one-bad-apple rule, under which one employer's violation of the tax qualification requirements could disqualify the entire MEP. The Act fixes this by requiring the assets of a noncompliant employer to be spun out into a separate plan.

Tax credits to encourage small employers to set up plans. The SECURE Act will incentivize small employers (those with 100 or fewer employees) to establish retirement plans by increasing an existing tax credit from $500 to a maximum of $5,000 per year for the first three years. This credit will help offset plan startup costs.

AUTHOR

Dan Notto, J.D.
ERISA Strategist
Retirement Solutions

[1] H.R. 1865.

Credits for small employers that add automatic enrollment. The Act provides an additional tax credit for small employers that add an automatic enrollment feature to their 401(k) plans. The credit is $500 per year for three years.

Participation by long-term part-time employees. The Act will require 401(k) plans to permit employees who work at least 500 but less than 1,000 hours in three consecutive 12-month periods to contribute to the plan. These individuals may be excluded for nondiscrimination and top-heavy testing purposes, and the employer is not required to make matching or other contributions for them.

Lifetime income disclosure on participant statements. Participant statements will have to include an estimate of the monthly amount a participant could receive as a single or joint life annuity, based on the participant's current account balance. The Act requires the Department of Labor (DOL) to provide assumptions plans can use and to issue a model disclosure.

Fiduciary safe harbor for selecting an insurer to provide lifetime income. If certain conditions are met, the SECURE Act will protect plan fiduciaries who select an insurance company to provide guaranteed retirement income contracts if that insurer is unable to satisfy its obligations under the contracts. Among other requirements, the fiduciary will have to obtain written representations from the insurer that it is in compliance with all legal requirements. This provision does not relieve fiduciaries of their obligation to determine that the insurance contract is appropriate for participants and that the fees are reasonable.

Portability of lifetime income options. If a plan sponsor eliminates a guaranteed lifetime income investment as an option under the plan, the Act will permit participants to transfer their investment to another plan or IRA.

Increase in the automatic escalation cap in the automatic enrollment safe harbor. The Act raises to 15% the 10%-of-compensation cap on automatic contribution escalation in the 401(k) automatic enrollment nondiscrimination safe harbor.

Simplification of the rules for nonelective safe harbor 401(k) plans. The Act gives plan sponsors more time to elect safe harbor status if they satisfy the required employer contribution by making nonelective rather than matching contributions—that is, a nonelective safe harbor 401(k). Specifically, a plan can be amended to become a nonelective safe harbor 401(k) for a plan year any time before the 30th day before the end of the plan year. Plans can even be amended to become nonelective safe harbor 401(k)s as late as the end of the following plan year, provided the employer makes a nonelective contribution of 4% of compensation rather than the usual 3%. The SECURE Act also eliminates the requirement to provide a safe harbor notice to participants in nonelective safe harbor 401(k) plans.

Penalty-free withdrawals for birth or adoption expenses. The Act allows individuals to withdraw up to $5,000 from their retirement accounts for expenses related to the birth or adoption of a child without the 10% early withdrawal penalty. A plan can permit birth or adoption distributions even if it does not otherwise permit in-service withdrawals.

Increase in the age when distributions must begin. The SECURE Act raises the starting age for required minimum distributions from 70 ½ to 72.

Changes to the required minimum distribution rules for nonspouse beneficiaries. The SECURE Act requires the nonspouse beneficiary of a deceased participant to withdraw the balance in the decedent's account within 10 years of death. There are some exceptions, including disabled beneficiaries.

Traditional IRA contributions permitted after 70 ½. The Act repeals the prohibition on contributions to traditional IRAs by individuals who have reached the age of 70 ½.

Expanded tax-free distributions from 529 college savings plans. Specifically, tax-free distributions are available for certain apprenticeship programs certified by the Secretary of Labor and for distributions of up to $10,000 to repay qualified student loans for the account beneficiary or a sibling of the beneficiary.

SECURE Act

Applicability and effective dates of key provisions

PROVISION	APPLICABILITY	EFFECTIVE DATE
Multiple employer plans	Defined contribution (DC) plans	Plan years beginning after 2020
Tax credits to encourage small employers to set up plans	Qualified plans (e.g., 401(k) plans), SIMPLE IRA and Simplified Employee Pension (SEP) plans	Tax years beginning after 2019
Credit for small employers that add automatic enrollment	401(k) and SIMPLE IRA plans	Tax years beginning after 2019
Participation by long-term part-time employees	401(k) plans	Plan years beginning after 2020
Lifetime income disclosure on participant statements	DC plans	12 months after the DOL provides guidance
Fiduciary safe harbor for selecting insurer to provide lifetime income	DC plans	Date of enactment–December 20, 2019
Portability of lifetime income options	DC, 403(b) and 457(b) plans	Plan years beginning after 2019
Increase in the automatic escalation cap in the automatic enrollment safe harbor	401(k) plans	Plan years beginning after 2019
Simplification of the rules for nonelective safe harbor 401(k) plans	401(k) plans	Plan years beginning after 2019
Penalty-free withdrawals for birth or adoption expenses	Qualified DC plans, 403(b) plans and IRAs	Distributions made after 2019
Increase in the age when distributions must begin	Qualified plans, traditional IRAs, 403(b) and 457(b) plans	Individuals who reach age 70 ½ after 2019
Changes to the required minimum distribution rules for nonspouse beneficiaries	Qualified DC plans, traditional and Roth IRAs, 403(b) and 457(b) plans	Effective with respect to participants and account holders who die after 2019
Permit traditional IRA contributions after 70 ½	Traditional IRAs	Contributions for tax years beginning after 2019
Expand tax-free distributions from 529 plans	529 college savings plans	Distributions made after 2018

CONTACT US

To learn more about our ***Legislative and Regulatory Program*** or any of our other Retirement Insights programs, contact your J.P. Morgan representative.

RI-LEGREG-1Q20

0903c02a827b2598