

The SECURE Act and What It Means to Your Plan

As you likely have heard, Congress has passed, and President Trump has signed into law, the Further Consolidated Appropriations Act, 2020, which includes the Setting Every Community Up for Retirement Enhancement Act, known as the SECURE Act (Act). Although many of the provisions included in the Act are intended to make it easier for employers to establish a new plan, the Act includes several provisions that will impact your existing plan, and others that may impact your plan depending on how it is structured. While some of the provisions are already in effect, the good news is your plan doesn't need to be amended until the last day of the plan year beginning on or after January 1, 2022 (i.e., December 31, 2022 for calendar year plans).

Following is a summary of those provisions along with effective dates and comments, grouped by level of impact to you and sub-sorted by relative effective date. Note that some of the provisions in the Act are not included in this write-up because they are very unlikely to impact your plan.

Provisions affecting all plans – action required (may only apply to certain plan types, as noted)

Increase in Age for Required Beginning Date for Mandatory Distributions

This provision increases the required minimum distribution age from 70 ½ to 72.

Effective date: Distributions made after December 31, 2019, but only for those that turn 70 ½ after that date.

Comment: This provision means if a participant turns 70 ½ any time after December 31, 2019, the age at which they need to start taking distributions is 72. Anyone who turned 70 ½ prior to January 1, 2020 must start taking distributions at 70 ½. So, if a participant subject to the required minimum distribution rules turned 70 ½ during 2019, they would need to take their first distribution (for the 2019 tax year) by April 1, 2020 and continue to take distributions each year thereafter. Note that it is unclear whether a plan is required to increase the age at which required minimum distributions must start or if you can still require participants to start distributions earlier at 70 ½. Clarification is needed from the IRS/DOL. Regardless, we track and handle required minimum distributions for you, so no action is required on your part.

Elimination of the notice requirement for certain 401(k) safe harbor plans

Plans satisfying the 401(k) safe harbor via a 3% nonelective contribution will no longer be required to provide an annual notice to participants. It is unclear whether or not plans making a matching contribution intended to satisfy the matching safe harbor in addition to the 3% safe harbor nonelective contribution will still need to provide the notice. We expect that guidance is forthcoming from the IRS/DOL, but in the meantime, we will continue to send out the notice for this specific type of plan until we get clarification.

Effective date: Plan years beginning after December 31, 2019.



Comment: Participants are required to receive a number of notices and disclosures, and any reduction is welcome. Since we handle all the required annual notices for you, we will review if your plan requires a safe harbor notice. No action is required on your part.

Modifications to Required Minimum Distribution Rules

Under this provision, the 5-year post-death distribution rule is extended to 10 years; however, it eliminates the lifetime distribution option for beneficiaries who are not “eligible designated beneficiaries.” Eligible designated beneficiaries include spouses, minor children, chronically ill or disabled individuals, and other beneficiaries who are no more than 10 years younger than the participant. Note that children who reach majority age (as determined by state law, but for most states the age is 18) after death of the participant are no longer considered eligible designated beneficiaries and thus have 10 years from that point to distribute their balance.

Effective date: For most plans, applies to participants who die after December 31, 2019.

Comment: This change requires most beneficiaries to get the money out of the plan faster, eliminating so-called “stretch IRAs.” We will ensure that your plan complies with this new provision, so no action is required on your part.

Disclosure Regarding Lifetime Income

This provision requires benefit statements to include a lifetime income disclosure, at least annually, that illustrates the monthly payments the participant would receive if the total account balance were used to provide lifetime income streams.

Effective date: There is no definitive effective date for this disclosure; however, it will certainly be no earlier than 12 months from now as this provision becomes effective 12 months after the DOL has issued 1) interim financial rules, 2) model disclosure language, and 3) assumptions used to calculate the lifetime income amount.

Comment: We will continue to monitor this situation and make sure the applicable disclosures are incorporated into participant statements when required. No action is required on your part.

Requirement to Allow Long-term Part-time Workers to Participate in 401(k) Plans

This provision requires that employers maintaining a 401(k) plan allow employees who have completed three consecutive years of service with at least 500 hours in each year and is at least 21 years of age to participate in the elective deferral portion of the plan only (i.e., no employer contributions are required). The employer may elect to exclude such employees from testing under the nondiscrimination and coverage rules, and from the application of the top-heavy rules.

Effective date: Plan years beginning after December 31, 2020. Note that periods of service prior to the effective date are ignored, so effectively the earliest an employee subject to this new provision would need to be allowed to participate is in the plan year beginning on or after January 1, 2024.

Comment: This is a significant change for those plans that have eligibility provisions that are more restrictive than provided for under this new provision. For some smaller plans, including these additional participants could lead to an annual audit. We will work with you to make sure this is handled correctly, assuming it applies to your plan.

Provisions that are optional – action only required if you want to implement or take advantage of the provision (may only apply to certain plan types, as noted)

Fiduciary Safe Harbor for Selection of Lifetime Income Provider

This provision provides fiduciaries with a safe harbor means to satisfy the prudence requirement with respect to the selection of insurers for a guaranteed retirement income under which they are protected from liability for any losses that may result to the participant or beneficiary due to an insurer's inability in the future to satisfy its financial obligations under the terms of the contract.

Earliest effective date: December 20, 2019.

Comment: This would only apply if you add a lifetime income investment option to your plan's investment line up. Consult your plan's investment advisor regarding the topic of lifetime income options.

Increase to the Auto Enrollment Safe Harbor Cap

This only applies to plans satisfying the 401(k) safe harbor via a Qualified Automatic Contribution Arrangement (QACA). The cap on auto-escalation of contributions is increased from 10% to 15% of pay.

Earliest effective date: Plan years beginning after December 31, 2019.

Comment: If you have a QACA provision in your plan and would like to increase the escalation cap, please contact your plan Consultant.

Ability to Amend the Plan to be 401(k) Safe Harbor

The Act permits a plan to become a 401(k) safe harbor plan via a 3% nonelective contribution after the start of the plan year. The plan must be amended either 1) any time before the 30th day before the close of the plan year, or 2) any time after the 30th day before the close of the plan year but not later than the close of following plan year, as long as the safe harbor nonelective contribution is increased to at least 4% (rather than at least 3%).

Earliest effective date: Plan years beginning after December 31, 2019

Comment: Please contact your plan Consultant at any point in the future if you would like to discuss this option.



Small Employer Automatic Enrollment Tax Credit

This provision creates a new tax credit of \$500 per year to a “small employer” (i.e., no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding year) that adds an automatic enrollment provision to its plan, whether it be a new plan or one that is already in existence. The credit is in addition to any plan start-up credit allowed and is available for three years.

Earliest effective date: Taxable years beginning after December 31, 2019.

Comment: If you would like to discuss adding an automatic enrollment provision to your plan, please contact your plan Consultant.

Portability of Lifetime Income Options

This provision allows for the distribution of lifetime income investments (i.e., annuities), if a plan sponsor no longer wants to offer them as an investment option in the plan.

Earliest effective date: Plan years beginning after December 31, 2019.

Comment: This would only apply if you already have or add a lifetime income investment option to your plan’s investment line up. Consult your plan’s investment advisor regarding the topic of lifetime income options.

Penalty-Free Withdrawals from Retirement Plans for Individuals in Case of Birth or Adoption

This provision allows for penalty-free withdrawals from retirement plans for any “qualified birth or adoption distributions” up to \$5,000. While not subject to the 10% early withdrawal penalty, the amount taken is subject to regular income tax; however, since the distribution is treated as not being rollover eligible, it is not subject to the mandatory tax withholding rules. Furthermore, the amount may be paid back in order to avoid taxation. It’s unclear how long a participant would have to pay back the amount, so we’re hopeful the IRS will provide guidance at some point in the future.

Earliest effective date: Distributions made after December 31, 2019.

Comment: If you would like to discuss adding this provision to your plan, please contact your plan Consultant.

Reduction in Minimum Age for Allowable In-Service Distribution from Pension Plans

This provision permits pension plans or plans with pension plan money that was transferred in (e.g., a money purchase pension plan that merged into a 401(k) plan) to allow participants to take in-service distributions from that portion of their account at age 59 ½ (was age 62).

Earliest effective date: Plan years beginning after December 31, 2019.



Comment: Note that this provision is not part of the SECURE Act itself but is separately included in the Bipartisan American Miners Act, which similar to the SECURE Act, is part of the Further Consolidated Appropriations Act, 2020. If you have a pension plan or a plan with money purchase pension plan money in it and would like to discuss amending the applicable in-service distribution age, please contact your plan Consultant.

**Provisions that don't directly impact your plan, but are important to note –
no action required**

Expansion of Section 529 Plans

The legislation expands 529 education savings accounts to cover costs associated with registered apprenticeships and up to \$10,000 of qualified student loan repayments (including those for siblings).

Effective date: Retroactive to distributions made after December 31, 2018.

Repeal of Maximum Age for Traditional IRA Contributions

This provision permits an individual who has attained age 70½ to contribute to a traditional IRA.

Effective date: Taxable years beginning after December 31, 2019.

Increase in Penalty for Failure to File a tax return

This provision increases the failure to file penalty to the lesser of \$435 or 100 percent of the amount of the tax due.

Effective date: Returns due after December 31, 2019.

Comment: The penalty is for tax returns in general.

Increased Penalties for Failure to File Retirement Plan Returns

This provision increases the penalty for failing to file Form 5500 to \$250 per day, not to exceed \$150,000. It also increases the penalty for failing to report plan name, sponsor name, and sponsor address changes; plan terminations; and plan mergers or spinoffs to \$10 per failure, not to exceed \$10,000. Furthermore, it increases the penalty for failing to file Form 8955-SSA to \$10 per day per unreported participant, not to exceed \$50,000. And finally, the penalty for not providing a required withholding notice is increased to \$100 for each failure, not to exceed \$50,000 for all failures during any calendar year.

Effective date: Returns, statements, and notices due after December 31, 2019.

Comment: We work with you to ensure timely filings and notices; however, note that the IRS requires the filing of Form 8822-B to report changes to your business name and/or address for all tax forms, including Form 5500. It is unclear whether these increased penalties would apply to this form, but to be safe, you'll want to be sure to complete and file Form 8822-B if you change your business name and/or address.

Other miscellaneous provisions that don't or are not likely to apply to you – no action required

Clarification of Retirement Income Account Rules Relating to Church-Controlled Organizations

The legislation clarifies certain individuals that may be covered by plans maintained by church-controlled organizations.

Effective Date: Per the Act, “years beginning before, on, or after” December 20, 2019 (i.e., as if it's always been that way).

Treatment of Custodial Accounts on Termination of Section 403(b) Plans

This provision would allow terminating 403(b) plans to distribute the accounts of participants as individual tax-deferred 403(b) custodial accounts that remain subject to the 403(b) rules in effect at the time that the individual custodial account is distributed. It requires further guidance to be issued by the IRS by June of 2020.

Effective Date: Retroactive to taxable years beginning after December 31, 2008.

Comment: We will monitor the guidance, but we suspect that it would be a very rare case where this would apply.

Community Newspapers Pension Funding Relief

This provision provides pension funding relief for community newspaper plan sponsors by increasing the interest rate to calculate those funding obligations to 8%. Additionally, this bill provides for a longer amortization period of 30 years from 7 years.

Effective Date: Retroactive to plan years ending on or after December 31, 2017.

Comment: This applies to a very limited group of plans and only extends the plan's ultimate demise and takeover by the PBGC.

Eliminate the Option to Make Loans through Credit Cards and Other Similar Arrangements

Effective date: All loans made after December 20, 2019.

Comment: This was very rarely used and was not a good idea in the first place.



Increased Tax Credit for Small Employer Pension Plan Start-Up Costs

This provision is intended to encourage “small employers” (i.e., no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding year) to establish retirement plans. It increases the start-up plan tax credit to the greater of (1) \$500 or (2) the lesser of (a) \$250 multiplied by the number of non-highly compensated employees of the eligible employer who are eligible to participate in the plan or (b) \$5,000. The credit is limited to 50% of the start-up costs (as defined in the code) and applies for up to three years.

Effective date: Taxable years beginning after December 31, 2019.

Plans Adopted by Filing Due Date for Year May Be Treated as in Effect as of Close of Year

This provision allows an extended period of time for businesses to adopt a qualified retirement plan for a given year.

Effective Date: Plan adopted for taxable years beginning after December 31, 2019.

Comment: This only applies if you wish to adopt another plan at some point in the future.

Benefits for Volunteer Firefighters and Emergency Medical Responders

Effective date: Taxable years beginning after December 31, 2019.

Comment: This does not impact qualified retirement plans.

Certain Taxable Non-Tuition Fellowship and Stipend Payments Now Treated as Compensation for IRA Purposes

Effective date: Taxable years beginning after December 31, 2019.

Comment: This does not impact qualified retirement plans.

Pooled Employer Plans

The provision is targeted at small employers and start-up plans and provides for the establishment of Pooled Employer Plans that allow for unrelated companies to participate in a single plan with one document, one 5500 filing, and one independent audit (if required).

Earliest effective date: Plan years beginning after December 31, 2020.

Combined Annual Reports for Group of Plans

This provision allows for the filing of a consolidated Form 5500 and other reports for similar plans under certain circumstances.

Effective Date: Returns and reports for plan years beginning after December 31, 2021.



Modification of Nondiscrimination Rules to Protect Older, Longer Service Participation

The legislation modifies the nondiscrimination rules with respect to defined benefit plans with closed classes of participants to permit existing participants to continue to accrue benefits.

Effective Date: Various.

Comment: Your plan consultant will contact you if this applies to you.

Modification of PBGC Premiums for Certain Defined Benefit Plans

Comment: Your plan consultant will contact you if this applies to you.