
Provisions Affecting Individual Retirement Accounts in the SECURE Act of 2019

On December 20, 2019, President Trump signed legislation funding the federal government through September 30, 2020, that contains provisions from the Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act,” or “Act”). The SECURE Act includes several provisions affecting Individual Retirement Accounts (“IRAs”). We have highlighted several of these provisions below.

- *IRA Post-Death Required Minimum Distribution Rules.* The SECURE Act limits the use of “Stretch IRAs” by requiring an individual's entire interest in an IRA to be distributed to a designated beneficiary within 10 years after the death of the employee, whether or not distributions of the employee's interest have begun. An exception is provided for eligible designated beneficiaries that generally allows distributions over the life or life expectancy of the eligible beneficiary beginning in the year following the year of the employee's death. Eligible designated beneficiaries include (1) surviving spouses, (2) children who have not reached the age of majority, and (3) disabled and chronically ill beneficiaries. The change does not affect an existing binding annuity contract. Surviving spouses can still elect to delay distributions until the end of the year that the employee would have attained age 70½ (or age 72, as appropriate). The provision generally applies to distributions with respect to individuals who die after December 31, 2019.
- *Increase in Age for Required Minimum Distributions.* The Act increases the age minimum required distributions from IRAs must begin from age 70½ to age 72. The provision applies to distributions required to be made after December 31, 2019, with respect to individuals who turn 70½ after such date.
- *Maximum Age for IRA Contributions.* The SECURE Act repeals the maximum age for traditional IRA contributions for contributions made for taxable years beginning after December 31, 2019.
- *Qualified Charitable Deduction Exclusion.* The SECURE Act reduces the \$100,000 qualified charitable distribution exclusion by the excess of the allowed IRA deduction for all taxable years ending on or after age 70½ over the amount of all prior year reductions. The provision is effective for distributions made for taxable years beginning after December 31, 2019.
- *Child Birth or Adoption Withdrawals.* The SECURE Act provides an exception to the 10% early withdrawal tax for qualified birth or adoption distributions from IRAs made after December 31, 2019. The maximum aggregate amount that may be treated as qualified birth or adoption distributions by any individual is \$5,000. The qualified birth or adoption distribution must be made from the plan to an individual during the 1-year period beginning on the date on which the individual's child is born or on which the legal adoption of an eligible adoptee is finalized. Subject to certain requirements, individuals may recontribute qualified birth or adoption distributions to their plan. This provision is effective for distributions made after December 31, 2019.

- *More IRA Contribution Options for Some Individuals.*

- The SECURE Act expressly treats taxable amounts paid to graduate and postdoctoral students as income for purposes of IRA contributions. This allows these students to use non-tuition fellowship and stipend payments to contribute to an IRA. The provision applies for tax years beginning after December 31, 2019.

- The Act also allow individuals who provide foster care to individuals with disabilities and who receive nontaxable “difficulty of care” payments to elect to include those payments as nondeductible contributions to their IRA. The provision applies to contributions made after December 20, 2019.

Certain Pension Plan Provisions Included in the SECURE Act of 2019

On December 20, 2019, President Trump signed legislation funding the federal government through September 30, 2020, that contains provisions from the Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act,” or “Act”). The SECURE Act includes pension-related provisions that incentivize employers to adopt employer-sponsored plans and provide lifetime income options to employees. It also makes changes to plan distribution and administration requirements. We have highlighted several of these provisions below.

Small Plan Incentives

- *Pooled Employer Plans.*

- The SECURE Act permits unrelated employers to participate in “Pooled Employer Plans,” which are multiple employer plans (“MEPs”) that are treated as a single plan under the Employee Retirement Income Security Act of 1974 (“ERISA”) although participating employers do not share common characteristics. Such plans must be administered by “Pooled Service Providers.”

- To further encourage employers to adopt MEPs, the SECURE Act also amends the Internal Revenue Code (“I.R.C.”) to provide relief from the unified plan rule (also referred to as the “one-bad-apple rule”), which provided that a failure of one participating employer in a MEP could lead to the entire plan's disqualification. These provisions are effective for plan years beginning after December 31, 2020.

- *Small Employer Plan Sponsor Credits.*

- Under current law, an eligible employer with 100 or fewer employees may receive a nonrefundable income tax credit up to the lesser of up to \$500 to adopt a new qualified retirement plan. The SECURE Act increases the amount of the credit to up to \$5,000 for three years.

- o The SECURE Act also provides an additional general business tax credit of up to \$500 per year for three years to small employers that establish plans including an automatic enrollment arrangement or add an automatic enrollment arrangement to an existing plan.

These provisions are effective for taxable years beginning after December 31, 2019.

Lifetime Income Provisions

- *Lifetime Income Disclosure.* The SECURE Act requires employers sponsoring defined contribution plans to include a lifetime income disclosure on participants' annual benefit statements. The Labor Department ("DOL") is required to issue a model lifetime income disclosure, prescribe assumptions that may be used in converting participant accrued account balances into lifetime income stream equivalents for purposes of the disclosure, and issue interim final rules no later than December 21, 2020. Plan sponsors and fiduciaries will not have fiduciary responsibility for providing lifetime income estimates that meet the requirements set forth in DOL guidance. The provision is effective for benefit statements furnished more than 12 months after the latest of DOL's publication of an interim final rule or model disclosures and assumptions.
- *Fiduciary Safe Harbor for Selection of Lifetime Income Provider.* The SECURE Act creates a new fiduciary safe harbor for employers opting to include a lifetime income investment option in their defined contribution plans. The provision sets forth measures a plan fiduciary may take to ensure that its selection of an insurer to provide a lifetime income investment option to the plan is prudent. The provision is effective December 20, 2019.

Plan Distributions Provisions

- *Defined Contribution Plan Post-Death Required Minimum Distribution Rules.* The SECURE Act requires an employee's entire interest in a defined contribution plan to be distributed to a designated beneficiary within 10 years after the death of the employee, whether or not distributions of the employee's interest have begun. An exception is provided for eligible designated beneficiaries that generally allows distributions over the life or life expectancy of the eligible beneficiary beginning in the year following the year of the employee's death. Eligible designated beneficiaries include (1) surviving spouses, (2) children who have not reached the age of majority, and (3) disabled and chronically ill beneficiaries. Surviving spouses can still elect to delay distributions until the end of the year that the employee would have attained age 70½ (or age 72, as appropriate). The provision generally applies to distributions with respect to employees who die after December 31, 2019.
- *Portability of Lifetime Income Options.* The SECURE Act clarifies that a defined contribution plan may allow qualified distributions of a lifetime income investment, or distributions of a lifetime income investment in the form of a qualified plan distribution annuity contract, within 90 days before the date such investment is no longer authorized to be held as a plan investment option. The provision is effective for plan years beginning after December 31, 2019.
- *Child Birth or Adoption Withdrawals.* The SECURE Act provides an exception to the 10% early withdrawal tax for qualified birth or adoption distributions from defined contribution retirement plans made after December 31, 2019. The maximum aggregate amount that may be treated as qualified birth or adoption distributions by any individual is \$5,000. The qualified birth or adoption distribution must be made from the plan to an individual during the 1-year period beginning on the date on which the

individual's child is born or on which the legal adoption of an eligible adoptee is finalized. Subject to certain requirements, individuals may recontribute qualified birth or adoption distributions to their plan. This provision is effective for distributions made after December 31, 2019.

- *Limits on Loans Through Credit Cards.* The SECURE Act prohibits plan loans to be made through credit cards or other similar arrangements. The provision is effective for loans made after December 20, 2019.
- *Increase in Age for Required Minimum Distributions.* The Act increases the age minimum required distributions must begin from age 70½ to age 72. The provision applies to distributions required to be made after December 31, 2019, with respect to individuals who turn 70½ after such date.

Please note that outside of the SECURE Act, the funding legislation also expands the availability of phased retirement by reducing the minimum age for an employee to receive in-service distributions from age 62 to age 59½. The provision applies to plan years beginning after December 31, 2019.

401(k) Plan Administration Provisions

- *Inclusion of Certain Part-Time Employees.* The SECURE Act requires 401(k) plans to provide that long-term, part-time workers who work for at least 500 hours per year with an employer for at least three consecutive years that meet age 21 by the end of the three consecutive year period become eligible to participate in their employer's 401(k) plans. Employers may exclude employees who are eligible to participate in the plan solely due to this provision from the nondiscrimination and coverage rules and the application of the top-heavy rules. The provision is effective for plan years beginning after December 31, 2020, except 12-month periods beginning before January 1, 2021 are not taken into account to determine whether the three consecutive year period is met.
- *Increase in Limit on Automatic Enrollment Safe Harbor Cap.* The I.R.C. automatic enrollment safe harbor 401(k) plan nondiscrimination rules impose a 10 percent cap on the escalation of employee elective deferrals. The SECURE Act increases the cap to 15 percent of employee pay after the first year of participation. The provision is effective for plan years beginning after December 31, 2019.
- *Nonelective 401(k) Safe Harbor Changes.* The SECURE Act makes several changes to the I.R.C.'s nonelective contribution 401(k) safe harbor plan requirements including: (1) eliminating the safe harbor notice requirement for such plans; (2) permitting a plan sponsor to amend their plan to nonelective status any time before the 30th day before the plan year closes; and (3) permitting plan sponsors to make later amendments if nonelective contribution of at least four percent of compensation is provided to all eligible employees and the plan is amended by the last day for distributing excess contributions for the plan year (i.e., generally by the close of the following plan year). The provision is effective for plan years beginning after December 31, 2019.

Reporting, Plan Amendment, and Plan Adoption Provisions

- *Aggregated Form 5500 Annual Report.* The Act requires the DOL and Treasury secretaries, in cooperation, to modify Form 5500 not later than January 1, 2022, to allow all members of a group of identical individual account or defined contribution plans (same trustee, named fiduciaries, administrator, and plan year start date) to file a single Form 5500. The change is to apply for returns required to be filed for plan years beginning after December 31, 2021.

- *Increased Penalties for Failure to File Retirement Plan Returns.* The SECURE Act increases the I.R.C. penalty for failing to file a Form 5500 from \$25 to \$250 per day (up to a maximum of \$150,000). The provision is effective for forms due after December 31, 2019.
- *Plan Amendments.* The Act provides that compliance with the qualification requirements and relief from the anti-cutback rule generally is available for an amendment to any retirement plan or annuity contract made pursuant to any amendment made by the Act or a Treasury or DOL regulation issued under the Act, if made on or before the last day of the first plan year beginning on or after January 1, 2022, or a later date prescribed by the Treasury Secretary.
- *Timing of Plan Adoption.* The SECURE Act allows an employer to treat a qualified plan adopted after the close of taxable year as having been adopted on the last year of a plan year if it adopts the plan before the deadline for filing its tax return for the taxable year. The provision is effective for plans adopted for taxable years beginning after December 31, 2019.