SECURE Act Adds New Compliance Requirements For Employers

3.2.20

Congress recently passed significant legislation affecting employer-sponsored employee benefit plans. The Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 (H.R. 1994) was passed by the Senate on December 19, 2019, as part of the Further Consolidated Appropriations Act of 2020 (H.R. 1865). The changes to ERISA and the Internal Revenue Code are expansive, and include provisions that impact employer-sponsored retirement, health and welfare plan design and administration, as well as individual retirement accounts and individual taxation.

This article focuses on SECURE Act provisions that are aimed at expanding employer-sponsored group benefits and associated administrative and revenue enhancement provisions. SECURE Act provisions for small employer plans, governmental plans, IRAs, as well as tax provisions impacting firefighters, emergency responders, and children are not the focus in the summary below.

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**NEXT STEPS**

**Mandates Participation in DC plans for Certain Long-Term Part-Time Employees (LTPT)**

Part-time employees meeting the following conditions must be eligible to participate in a 401(k) plan:

1) Worked at least 500 hours in three consecutive 12-month periods; and
2) Reached age 21 (by the end of the three consecutive 12-month periods).
periods). Mandatory – substantive and administrative PY after 12/31/20 [12-month periods beginning before 1/1/21 will not be taken into account] including multiemployer) APPLICATION: DC plans [not including multiemployer]

KEY OBSERVATIONS:

- No match or profit-sharing contribution required
- If employer contributions made for LTPT, vesting based on 500 hours
- May allow LTPT participation in automatic enrollment safe harbor at default rate
- Nondiscrimination and top-heavy plan relief included

NEXT STEPS:

- Amend plans if necessary
- 2021-PY - Track PT employee service hours
- 2024 PY – Permit LTPT to make elective deferrals

401(k) Safe Harbor changes:
1) Increases maximum automatic deferral rate for Qualified Automatic Contribution Arrangements (QACAs) to 15%;
2) Eliminates participant notice requirement when adopting a non-elective employer contribution safe harbor plan (QACA or traditional); and
3) Allows non-elective employer contribution safe harbor plans (QACA or traditional) to be adopted by amendment either: (i) by the 30th day before PY close; or (ii) if a non-elective employer contribution of 4% of compensation is made for all eligible employees, by the last day for distributing excess contributions for the PY (generally close of following PY). Permissive substantive and administrative updates PY beginning after 12/31/19 APPLICATION: DC plans (including multi-employer)

KEY OBSERVATIONS:

- 15% Cap increase applies after first PY
- Cap remains 10% for first PY
- Minimum thresholds unchanged
- Notice requirement remains for safe harbor 401ks with matching contributions
- Additional guidance expected on midyear changes and uniformity requirements
- NEXT STEPS: If adopted, update procedures, plan documents, and participant communications

Provides permissible and mandatory changes to Lifetime Income Provisions; portability; safe harbor; and disclosure
1) Lifetime Income Option Portability – when a plan has a lifetime income investment option and that
option ceases to be an authorized investment option, the plan may allow (1) qualified distributions of
the lifetime income investment; or (2) distribution of the lifetime income in the form of a qualified
plan distribution annuity contract – within 90 days before the date the lifetime income investment is
no longer authorized under the plan;
2) Optional fiduciary safe harbor for selection of insurer that provides lifetime income investment
option; and
3) Lifetime income disclosure – annual benefit statements must include lifetime income disclosure.
DOL required to issue model statement (disclosure and assumptions) before 12/20/20.  (1)
Permissive substantive plan update
2) Permissive – administrative practice
3) Mandatory - Administrative  (1) PY after 12/31/19
   (2) 12/20/19
   (3) Effective for statements furnished 12+ more months after the latest of the DOL’s (i) publication of
interim final rule; (ii) model disclosure, or (iii) conversion assumptions  APPLICATION: DC plans
KEY OBSERVATIONS:

■ Detailed rules and requirements
   NEXT STEPS:
   ■ Provide annual disclosure statements to plan participants per statement effective date
   guidance

Provides penalty-free in-service distributions for qualified births or adoptions
Retirement plan withdrawals up to $5,000 within one year following a “qualified birth or adoption”
are not subject to 10% early withdrawal tax. Withdrawals may be recontributed.  Permissive-
Substantive and administrative  Distributions after 12/31/19  APPLICATION: DC plans (including
multi-employer)
KEY OBSERVATIONS:

■ IRS working out details regarding recontributions and documentation
   NEXT STEPS:
   ■ Update distribution forms, plan documents, participant communications, Form 1099-R
   reporting and withholding and rollover processes

Prohibits plan loans made with credit cards
Treats retirement plan loans made via credit cards and similar arrangements as deemed
distributions.  Mandatory
Administrative  Effective for loans made after 12/20/19  APPLICATION: Retirement plans that
permit loans
Increases Required Beginning Date Age for Mandatory Distributions to 72.

Required beginning date for mandatory distributions from employer sponsored plans increased – April 1 following later of the calendar year in which employee attains age 72 or retires. Special rules for 5% owners.

If retirement plan account owner dies before the RBD and spouse is the beneficiary, spouse can delay distributions until December 31 of year in which decedent would have attained age 72.

Mandatory substantive plan updates Effective for distributions after 12/31/19 for individuals turning 70 ½ after 12/31/19 APPLICATION: DC and DB plans

**Key Observations:**

- Old rule applies to employees that are already 70 ½
- In DB plans no change to required actuarial adjustment for employees working past 70 ½

**Next Steps:**

- Update distributions forms, plan documents, participant communications, etc.
- Update procedures – internal and external TPA

Accelerates Post-Death Minimum Distribution Rules

New General Rule. After participant dies, remaining account balance must be distributed to designated beneficiaries within 10 years of participant’s death (end of 10th year following the year of death). Rule applies regardless of whether employee dies before, on or after RBD date UNLESS designated beneficiary is an “eligible designated beneficiary” = surviving spouse, child who has not reach majority, chronically ill individual (defined Code §401(a)(9)(E)(ii)(IV), any other individual who is not more than 10 years younger than the employee. The remaining account balance may be distributed over the life or life expectancy of the eligible designated beneficiary (similar to current law) beginning in the year following the year of death. Once a child reaches majority, or the eligible designated beneficiary dies, the account balance must be distributed within 10 years. Mandatory substantive plan updates Effective for distributions relating to deaths occurring after 12/31/19.

Delayed effective date for multiemployer distributions for employees who die in calendar years beginning after the earlier of:

1. The later of (a) the date on which the last collective bargaining agreement ratified before 12/20/19 terminates or (b) 12/31/19
2. 12/31/21 APPLICATION: DC plans

**Key Observations:**

- Not apply to qualified annuities in effect on 12/20/19
- Special “10-year rule” – if account owner dies before “effective date” (first day of first calendar year in which SECURE Act amendments apply to a plan – general effective date is
1/1/20]) and the designated beneficiary dies after the effective date – designated beneficiary treated as an “eligible designated beneficiary”

- Non-designated beneficiaries remain subject to prior rules

**NEXT STEPS:**

- Update distributions forms and plan documents, participant communications, beneficiary designation forms, etc.
- Update distribution procedures – internal and external TPA

**Provides new consolidated reporting requirements**

DC plans that are “related” – i.e., have the same trustee, the same ERISA fiduciary(ies), the same administrator, same plan year, and same investments or investment options may file a single, consolidated Form 5500. Administrative – currently permissive. Available PY beginning after 12/31/21  **PLAN APPLICATION:** “Related” DC plans

**ADDITIONAL KEY OBSERVATIONS:**

- IRS and DOL implementing new consolidated Form 5500 requirements no later than 1/1/2022
- Question as to whether unrelated employers that adopt virtually identical plans can utilize rule
- Independent plan audits still required for Form 5500

**Tenfold increase in IRS civil penalties relating to failure to file retirement plan returns.**

1) Failure to file Annual Report (Form 5500) - IRS penalty $250 per day, not to exceed $150,000 per annual report;
2) Failure to provide withholding notice (elect out of §3405 withholding) - $100 per failure, not to exceed $50,000 annually;
3) Failure to file IRS Form 8955-SSA initially for terminated vested participants – Plan Administrator IRS penalty is now $10 per participant, per day, up to $50,000 per plan year, absent reasonable cause;
4) Failure to provide updates regarding status changes of terminated vested participants is now - $10 per impacted participant multiplied by days in which failure continues – maximum penalty $50,000;
5) Failure to notify IRS of registration changes – plan name, plan administrator address, plan termination, merger or division, etc., $10 per day multiplied by days in which failure continues, maximum penalty of $10,000 for each failure; and
6) Increase in penalty for failure to file income tax return – if income tax return more than sixty (60) days late, statutory penalty amount cannot be less than $435.  **Administrative**  [1 – 4 and 6] For returns, statements and notices required after 12/31/19

(5) Income tax statutory penalty for late returns applicable for returns (including extensions) after 12/31/19  **PLAN APPLICATION:** ERISA-covered retirement plans
ADDITIONAL KEY OBSERVATIONS:

- No change in ERISA penalty for failure to file Form 5500 = up to $2,200 per day
- No SECURE Act change to delinquent filer program and associated remedies

Allows qualified retirement plans to be adopted after the close of a taxable year.
For new plans adopted AFTER tax years beginning 12/31/2019 – employer can elect to treat the plan adopted after the close of a taxable year but before the employer’s tax return filing due date [including extensions] as having been adopted the last day of the taxable year. Permissive substantive plan update Plans adopted for tax years beginning after 12/31/19

Provides specific nondiscrimination relief for Frozen/Closed Plans
If a plan is providing “make whole contributions” for a closed/frozen DB Plan class, special rules may apply for nondiscrimination testing purposes. Administrative Generally effective 12/20/19. Can elect to apply rules beginning after 12/31/13 PLAN APPLICATION: Certain DB Plans

KEY OBSERVATIONS:
- Potential relief under 401(a)(4), 401(a)(26) and 410(b)

NEXT STEPS:
- Consider impact on design
- Consider impacts on pending corrections
- Include relief in testing

Permits DB and 457(b) plans to reduce the minimum age for in-service distributions to 59 ½
Plan may reduce minimum age for in-service distributions from 62 (pension plans) and 70 ½ (governmental 457(b) plans) to age 59 ½. Substantive and administrative Permissive Effective PY beginning after 12/31/19 PLAN APPLICATION: DB and 457(b) plans

KEY OBSERVATIONS:
- Potential relief under 401(a)(4), 401(a)(26) and 410(b)

NEXT STEPS:
- Consider impact on design
- Consider impacts on pending corrections
- Include relief in testing

Provides that IRS will issue guidance on custodial account treatment related to 403(b) plan terminations.
Treasury guidance must provide that:
1) If an employer terminates a 403(b) custodial account, the account can be distributed in-kind to the
participant or a beneficiary;
2) The account be maintained tax-deferred until paid out; and
3) The account will not be considered distributed if the employer retains material contractual rights.
Mandatory

Substantive and Administrative Retroactive to tax years beginning after 12/31/08 PLAN
APPLICATION: 403(b) plans

KEY OBSERVATIONS:
- Treasury to issue guidance no later than 6 months after 12/20/19
- Examine for Treasury guidance

PCORI Fee Extended for 10 years
Self-insured group health plan sponsors and group health plan insurers fee for each “covered life” extended 10 years. Mandatory
Administrative Extended thru PY ending 9/30/29 PLAN APPLICATION: Group health plans

KEY OBSERVATIONS:
- POCRI fees supposed to end 9/30/19

Modifies PBGC premiums for cooperative and small employer charity (CSEC) plans.
PBGC flat-rate premiums set at $19 per participant and variable rate premiums set at $9 for each $1,000 of unfunded vested benefits. Mandatory Administrative PY beginning after 12/31/18 PLAN APPLICATION: CSEC DB plans

KEY OBSERVATIONS:
- “Unfunded vested benefits” is a defined term

Clarifies Church Plan participation rules
Provides that employees of nonqualified church-controlled organizations may be covered under a Code §403(b) plan that consists of a retirement income account. Permissive Substantive and Administrative Effective PY beginning on or after 12/20/19 PLAN APPLICATION: 403(b) plans

KEY OBSERVATIONS:
- Eligible individuals include: commissioned, licensed or ordained ministers; employees of tax-exempt organizations controlled or associated with a church or a convention or association of churches; certain employees separated from service with a church
- Source of minister’s compensation is irrelevant

New hardship distribution provision relating to nationally declared disasters
Participants can take up to a $100,000 distribution or loan and recontribute within 3 years as a result
of being impacted by a nationally declared disaster  
Substantive and Administrative  Effective for nationally declared disasters from 1/1/18 through 2/18/20  
PLAN APPLICATION: DC plans that permit hardship withdrawals and loans

KEY OBSERVATIONS:

■ Relief only extends through 6/17/20  

NEXT STEPS:

■ Plan amendments adopted by end of 2020 [governmental plans 2022]  
■ Provide elections forms, distribution forms, update plan documents  
■ Update related processes

Provides relief for multiple employer DC Plans
Various provisions providing relief for MEPs, including:
1) relief from plan disqualification due to a noncompliant employer “one bad apple”  
2) establishes open MEPs that are not required to share common characteristics when administered by pooled service providers.  
Substantive and Administrative  Effective for PY beginning after 12/31/20  
PLAN APPLICATION: DC

KEY OBSERVATIONS:

■ Many rules and administrative requirements relating to pooled employer plans

“Difficulty of Care” payments made to home healthcare workers treated as eligible Code § 415 compensation  
Mandatory
Substantive and Administrative  Effective for DC PY beginning after 12/31/15  
PLAN APPLICATION: DC plans

KEY OBSERVATIONS:

■ “Difficulty of Care” is a defined term  

NEXT STEPS:

■ Consider payments as compensation or earnings  
■ Consider payment when calculating contribution limits

Expands costs that can be covered in a Code § 529 education Savings Account.
Allows tax-free distributions from 529 Plans for certain apprenticeship program expenses and up to $10,000 per individual for qualified student loan repayments [principal or interest].  
Mandatory
Substantive and Administrative  Effective for distributions after 12/31/18  
PLAN APPLICATION: Permissively offered 529 plans

KEY OBSERVATIONS:
Special rules for qualified student loan repayments distributed to a sibling of a designated beneficiary

NEXT STEPS:

- Update distribution forms and plan documents

Extends paid family and medical leave tax credit for wages paid through 2020
IRC §45S provides a tax credit for employer-paid family medical leave meeting specified parameters.

Administrative Effective for wages paid in 2020 KEY OBSERVATIONS:

- There are parameters for receiving the tax credit and credit amounts increase based on amounts and weeks paid
- Credit already available in 2018, 2019

Repeals Cadillac Tax
Repeals impending ACA tax on high-cost employer medical plans. N/A Tax impending.
Effective for taxable years after 12/31/19 PLAN APPLICATION: Employer sponsored health plan; employer contributions to HRAs, HSAs and health FSA

Repeals UBTI for qualified transportation fringe benefits for tax-exempt employers
Repeals unrelated business taxable income tax on the value of qualified parking and qualified transportation fringe benefits provided by tax-exempt employers to employees. Mandatory
Administrative Effective retroactively to 1/1/18 PLAN APPLICATION: Qualified parking and qualified transportation fringe benefits

KEY OBSERVATIONS:

- Repeal for tax-exempt employers
- NEXT STEPS:
  - Consider filing Form 990-T to claim refund of taxes paid

Provides Remedial Amendment Period
Provides qualification requirement(s) compliance and anti-cutback rule relief to amendments made pursuant to the SECURE Act or any Treasury or Labor regulation issued under the Act.
Administrative Amendments made on or before last day of first plan year beginning on or after 1/1/22 [multiemployer plans 1/1/24]

After Congress passes legislation making changes to employee benefit plans, the IRS will typically release guidance relating to implementation of the changes in an operational way, and also stating when the changes must be documented in Plan Documents and Summary Plan Descriptions. We will provide more information about this guidance in future Benefits Update newsletter articles.
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