



SECURE Act Adds New Compliance Requirements For Employers

Insights
3.02.20

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.

SECURE ACT PROVISION	TYPE OF CHANGE	EFFECTIVE DATE (Plan Years = “PY”)	PLAN APPLICATION
			KEY OBSERVATIONS
			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).	Mandatory – substantive and administrative	PY after 12/31/20 (12-month periods beginning before 1/1/21 will not be taken into account)	APPLICATION: DC plans (not including multiemployer) KEY OBSERVATIONS: <ul style="list-style-type: none">No match or profit-sharing contribution requiredIf 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.

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

(1)
Permissive
substantive
plan update

(2)
Permissive –
administrative
practice

(3)
Mandatory -
Administrative

Permissive-
Substantive
and
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

Distributions
after 12/31/19

APPLICATION: DC
plans

KEY OBSERVATIONS:

- Detailed rules and requirements

NEXT STEPS:

- Provide annual disclosure statements to plan participants per statement effective date guidance

APPLICATION: DC
plans (including
multi-employer)

KEY OBSERVATIONS:

withdrawal tax. Withdrawals may be recontributed.

- 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.

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

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.

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

OR

- (2) 12/31/21

APPLICATION: DC plans

KEY OBSERVATIONS:

- Not apply to qualified annuities in effect on 12/2019
- 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

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 Available PY
– currently beginning after
permissive. 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

**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.

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

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

Permissive
substantive
plan update

Plans adopted
for tax years
beginning after
12/31/19

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.

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
Effective PY beginning after 12/31/19
Permissive

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

<p>Provides that IRS will issue guidance on custodial account treatment related to 403(b) plan terminations.</p>			<ul style="list-style-type: none"> • Include relief in testing <p>PLAN APPLICATION: 403(b) plans</p>
<p>Treasury guidance must provide that:</p>			<p>KEY OBSERVATIONS:</p>
<p>1) If an employer terminates a 403(b) custodial account, the account can be distributed in-kind to the participant or a beneficiary;</p> <p>2) The account be maintained tax-deferred until paid out; and</p> <p>3) The account will not be considered distributed if the employer retains material contractual rights.</p>	<p>Mandatory</p> <p>Substantive and Administrative</p>	<p>Retroactive to tax years beginning after 12/31/08</p>	<ul style="list-style-type: none"> • Treasury to issue guidance no later than 6 months after 12/20/19 <p>NEXT STEPS:</p> <ul style="list-style-type: none"> • Examine for Treasury guidance <p>PLAN APPLICATION: Group health plans</p>
<p>PCORI Fee Extended for 10 years</p> <p>Self-insured group health plan sponsors and group health plan insurers fee for each “covered life” extended 10 years.</p>	<p>Mandatory</p> <p>Administrative</p>	<p>Extended thru PY ending 9/30/29</p>	<p>KEY OBSERVATIONS:</p> <ul style="list-style-type: none"> • PCORI fees supposed to end 9/30/19 <p>PLAN APPLICATION: CSEC DB plans</p>
<p>Modifies PBGC premiums for cooperative and small employer charity (CSEC) plans.</p> <p>PBGC flat-rate premiums set at \$19 per participant and variable rate premiums set at \$9 for each \$1,000 of unfunded vested benefits.</p>	<p>Mandatory</p> <p>Administrative</p>	<p>PY beginning after 12/31/18</p>	<p>KEY OBSERVATIONS:</p> <ul style="list-style-type: none"> • “Unfunded vested benefits” is a defined term
<p>Clarifies Church Plan participation rules</p> <p>Provides that employees of nonqualified church-controlled organizations may be covered under a Code §403(b) plan that consists of a retirement income account.</p>	<p>Permissive</p> <p>Substantive and Administrative</p>	<p>Effective PY beginning on or after 12/20/19</p>	<p>PLAN APPLICATION: 403(b) plans</p> <p>KEY OBSERVATIONS:</p> <ul style="list-style-type: none"> • 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.

Permissive

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

PLAN APPLICATION:
DC plans

KEY OBSERVATIONS:

- “Difficulty of Care” is a defined term

“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

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

KEY OBSERVATIONS:

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

- 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 1/1/18

Effective retroactively to 1/1/18

PLAN APPLICATION: Qualified parking and qualified transportation fringe benefits

KEY OBSERVATIONS:

- Repeal for tax-exempt employers

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.

Amendments made on or before last day of first plan Administrative 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.

For more information, contact the authors at TGreene@fisherphillips.com (704.778.4167) or JDSmith@fisherphillips.com (440.838.8800).

Related People



Jeffrey D. Smith
Partner
440.838.8800
Email

Service Focus

Employee Benefits and Tax