

The SECURE Act

New Opportunities

January 15, 2020

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Agenda

SECURE Act

Retirement Plan Accessibility

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Qualified Birth or Adoption Distributions

Required Minimum Distributions

Long Service, Part Time Employees

Other Accessibility Provisions

MEPs and PEPs

Questions

Quick Poll

Before we begin...

What does the SECURE Act cover?

- A. Multiple Employer Plans (MEPs)
- B. Pooled Plan Providers (PEPs)
- C. Group Plans
- D. Not Sure

Stay tuned for the results!

SECURE Act

Included as Division O of the Further Consolidated Appropriations Act, 2020

Most sweeping pension legislation in nearly 15 years

Many provisions designed to **make retirement plans more accessible** and less cumbersome

Most provisions take effect this year

Plan amendments will generally be required by end of 2022 plan year

Disaster relief in Division Q; age 59-1/2 in-service distributions for pension plans and governmental 457(b) plans included in Division M (plan years beginning after 12/31/2019)

Retirement Plan Accessibility

- 401(k) safe harbor plans
- Small business tax credits
- 403(b) terminations and church plan eligibility
- Qualified birth or adoption distributions
- Required minimum distribution changes
- Long-service part-time employees
- Deadline for adopting qualified plans
- Credit card loans
- Lifetime income portability
- Multiple employer plans (MEPs) and pooled plan providers (PEPs)

Other Significant Provisions

Nondiscrimination testing relief for frozen defined benefit plans

Lifetime income disclosures:

- Pension benefit statements for individual account plans must now include, at least once each 12 months, the amount of monthly payments that would be received if the account balance was used to purchase an annuity
- IRS is to issue a model disclosure
- Required on benefit statements furnished more than 12 months after guidance is issued

Single 5500 for individual account group plans:

- Plans must have same trustee, named fiduciaries, plan years, and investment options

Filing penalties increased

Safe harbor for selecting retirement income contract provider

Grab bag (community newspaper funding rules, PBGC premiums for cooperative and small employer charity pension plans, etc.)

Disaster relief (Division Q)

In-service distributions at 59-1/2 from pension plans and governmental 457(b) plans (Division M)

Safe Harbor Plans

Qualified Automatic Contribution Arrangements (QACAs)

- Maximum automatic contribution rate increased to 15%
- 10% still applies during initial period
- Effective for plan years beginning after 12/31/2019

401(k) Nonelective Safe Harbor Notice

- Requirement to provide an annual notice eliminated
- Notice is still required for 401(k) matching contribution safe harbor plans
- Effective for plan years beginning after 12/31/2019

Adoption of 401(k) Nonelective Safe Harbor Feature

- Can now be adopted until 30 days before plan year end
- Can also be adopted until end of following plan year if 4% contribution
- Effective for plan years beginning after 12/31/2019

Small Business Tax Credits

Increase in tax credit for qualified startup costs

Employer must have no more than 100 employees who received at least \$5,000 in compensation in prior year

- Related employers are aggregated

Tax-exempt and governmental entities not eligible

Cannot have maintained a plan for substantially the same employees in the prior three years

Plan must have at least one NHCE who is participating

Can be qualified plan, SEP under 408(k), or SIMPLE under 408(p)

Credit is available for the first three years of a plan

- First year plan is effective or immediately prior year

50% of “qualified start-up costs” not to exceed the greater of;

- \$500, or
- The lesser of \$5,000 or $(\$250 \times \text{number of eligible non-highly compensated employees})$

Qualified Startup Costs means:

- Expenses incurred to start/administer plan
- Expenses incurred to provide retirement education to employees

Effective for taxable years beginning after 12/31/2019

Small Business Tax Credits (continued)

Example of Qualified Startup Costs Tax Credit:

- Employer A has 43 employees, 39 are NHCE (earned less than \$130,000 in prior year)
- Employer A adopts plan in 2020, to be effective 1/1/2021
- Employees who have completed one year of service are eligible to participate
- 27 of the NHCEs have one year of service
- Service provider charges \$7,500 to administer the plan in each of 2021, 2022 and 2023

Available credit for 2021 is \$3,750, determined as follows:

- 50% of \$7,500 = \$3,750
- Credit is capped at greater of \$500, or (ii) lesser of (A) \$5,000 or (\$250 x eligible NHCEs)
- \$250 x 27 eligible NHCEs is \$6,750
- Lesser of \$6,750 or \$5,000 is \$5,000
- Greater of \$500 or \$5,000 is \$5,000

Small Business Tax Credits (continued)

New automatic enrollment tax credit

- Employer must have no more than 100 employees who received at least \$5,000 in compensation in prior year
- Credit is available for the first three years an eligible automatic contribution arrangement is included in a qualified plan, SEP or SIMPLE
- Eligible automatic contribution arrangement as defined in 414(w)(3)
 - Uniform percentage of compensation and annual notice
 - No employer contributions required
- \$500 for each of three years
- Effective for taxable years beginning after 12/31/2019
- Both qualified startup costs tax credit and automatic enrollment tax credit are general business credits subject to the rules of Code Section 38(B)

403(b) Plan Provisions

403(b)(7) custodial accounts may now be distributed “in-kind” to the custodian to effectuate a plan termination

- Tax-favored status of account preserved if administered in accordance with rules in effect at time of distribution
- Effective for taxable years beginning after 12/31/2008 (IRS to issue guidance no later than 6/20/2020)

Clarification of individuals who may be covered in a 403(b)(9) retirement income account

- Duly ordained/commissioned/licensed ministers, regardless of source of income
- Employees of church-controlled tax-exempt organizations
- Effective 12/20/2019, with retroactive effect

Qualified Birth or Adoption Distributions

Permissible from IRAs, qualified plans, 403(b) plans, governmental 457(b) plans

Up to \$5,000 in payments per birth or qualified adoption is exempt from 10% early payment penalty tax

- Payment must be made within 1 year of birth/adoption
- Can be repaid as though received in an eligible rollover distribution
- Not eligible for rollover/no special tax notice
- Subject to 10% income tax withholding that can be waived

Effective for distributions made after 12/31/2019

Many questions exist

- Documentation?
- Optional?
- Process for repayment?

Required Minimum Distributions

Age for required minimum distributions raised from 70-1/2 to 72

- Applies to individuals who attain age 70-1/2 after 12/31/2019
- Protected benefit issues?
- If turned 70-1/2 in 2019, must take RMDs even while under age 72

Elimination of stretch IRA (and qualified plan equivalent)

- Applies with respect to deaths occurring after 12/31/2019, whether or not payments had begun before death
- Upon death, account balance must be completely distributed:
 - Within 5 years if beneficiary is not a designated beneficiary (e.g., estates, charities, some trusts)
 - Within 10 years if beneficiary is a designated beneficiary but not an “eligible designated beneficiary” (e.g., nonspouse beneficiary more than 10 years younger than participant)
 - Over life expectancy if payments begin within 1 year and beneficiary is an “eligible designated beneficiary” (e.g., spouse, minor child until age of majority)
 - Can a trust be an eligible designated beneficiary?
 - Once eligible designated beneficiary dies, remaining balance must be distributed within 10 years of the eligible designated beneficiary’s death

Long Service, Part Time Employees

Must be allowed to participate in 401(k) plans after complete 500 hours of service in each of 3 consecutive 12-month periods, if at least age 21 at end of that time

Effective for plan years beginning after 12/31/2020 but **count only periods of service completed on/after 1/1/2021**

- A began working part-time on 3/1/2018 and completed 500 hours in 2018, 2019 and 2020
- Although A has 3 consecutive years with 500 hours each, A is not eligible to participate in the plan on 1/1/2021, because service prior to 2021 doesn't count
- A must complete 500 hours in 2021 – 2023 before entering plan in 2024

Employer match and non-elective contributions not required

Disregarded for coverage, discrimination, top heavy testing

Years of vesting service accrue at 500 hours

Collective bargaining employees generally exempt

Other Accessibility Provisions

Qualified plan can now be adopted until due date (including extensions) for filing tax return for year plan is effective

Participant loans made available via a credit card or similar arrangement are now taxable distributions (loans made after 12/20/2019)

Lifetime income investments that are part of an investment option that is being eliminated from a plan can be distributed or rolled over (plan years beginning after 12/31/2019)

MEPs and PEPs

Unified plan/one bad apple rule eliminated for defined contribution MEPs

Participating employers must have common interests beyond plan participation OR have a pooled plan provider

- MEPs sponsored by a bona fide group or association of employers (Association Retirement Plans)
- MEPs sponsored by a bona fide PEO?

MEP terms must provide that the assets of a non-compliant plan will be spun off and that noncompliant employer is liable for liabilities of spun-off plan

Effective for plan years beginning after 12/31/2020

Note: Proposed IRS regulations also would eliminate this rule, when finalized, for eligible defined contribution MEPs that have established compliance practices, have procedural language in document, and take specified actions

MEPs and PEPs (continued)

Pooled Employer Plans (PEPs) treated as a single plan under ERISA

One 5500, one audit, ERISA bond based on aggregate PEP assets

- ERISA bond: 10% of funds handled, not to exceed \$1,000,000
- 5500 must include list of participating employers, estimate of percentage of contributions and account balances attributable to each, and information regarding the pooled plan provider
- PEP that covers fewer than 1,000 participants may qualify for simplified 5500 reporting if no single employer has 100 or more participants

Effective for plan years beginning after 12/31/2020

MEPs and PEPs (continued)

Pooled Employer Plan Defined

Individual account plan covering 2+ unrelated employers

Designates a pooled plan provider as a named fiduciary

Designates one or more trustees responsible for collecting contributions

- Cannot be an employer in the plan

Provides each participating employer has fiduciary responsibility to (i) select the pooled plan provider and other fiduciaries and (ii) invest/manage plan assets when not delegated to another fiduciary

No unreasonable restrictions on ceasing participation, taking distributions, or transferring assets

Pooled plan provider must provide required disclosures

Participating employers must take actions needed to maintain plan's qualified status

Disclosures can be provided electronically

MEPs and PEPs (continued)

What is a Pooled Plan Provider?

Person designated by plan as

- Named fiduciary
- Plan administrator
- Person responsible for all administrative duties needed to ensure Code/ERISA compliance

Registers as a pooled plan provider

Acknowledges status as fiduciary and plan administrator in writing

Ensures all persons who handle assets are appropriately bonded

Pooled plan provider required for a PEP, and for MEPs that do not satisfy commonality rules in order to disregard one bad apple rule



Questions and Answers

For more information, contact us at
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Our Next Webinar

Compensation, Retirement and Benefits
Trends Report

Wednesday, January 22 | 2 p.m. ET/11 a.m. PT

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20200113-1054833-3171148

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