SECURE Act eBook

Introduction

In December 2019, the most extensive retirement legislation in more than a decade was signed into law. The *Setting Every Community Up for Retirement Act of 2019*, better known as the SECURE Act, strives to expand the availability of employer-sponsored retirement savings plans through enhanced tax credits, expanded availability of multiple-employer plans, and reducing some of the administrative and compliance-related burdens normally associated with implementing a retirement plan program.

The new legislation introduced more than 30 provisions with varying degrees of complexity and application. The Schneider Downs Retirement Solutions team has created this SECURE Act eBook to provide an organized view of the new provisions and important highlights.

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Multiple Employer Plans and Pooled Employer Plans

Author: Shad Fagerland

Among the more significant retirement plan-related changes in the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) are new provisions that expand the ability of small employers to pool together into a single plan.

Historically, many small employers have been deterred from establishing retirement plans due to the hefty costs required to set up and maintain a plan that may cover only a few employees. One potential solution has been to pool multiple employers together under a single multiple employer plan, or MEP, which has the dual effect of reducing administrative fees payable by each participating employer as well as giving the plan leverage to negotiate lower fees with investment providers.

Prior to passage of the SECURE Act, MEPs have seen only limited success in the marketplace because of certain legal restrictions on MEP maintenance and operation. Under a "common interest" rule, employers participating in a MEP were required to share an interest in common with fellow participants other than mere participation in the plan. To comply with this requirement, MEPs have generally been offered only to limited groups of employers, such as members of a common industry group or employers located within a narrow geographic area. In addition, employers participating in a MEP have historically faced additional risk of tax penalties due to the so-called "one bad apple" rule, under which the tax qualification of the entire MEP could be compromised if even one participating employer failed to take actions necessary to maintain the tax-qualified status of the plan (such as passing applicable nondiscrimination tests or the timely adoption of a required plan amendment).

The SECURE Act seeks to expand the adoption of MEPs in two ways. First, a new category of plan referred to as a pooled employer plan, or PEP, is created. PEPs are similar to MEPs, except that they're not subject to the common interest rule. Thus, a single pooled plan provider may now establish a plan that is permitted to cover any employer in any industry group nationwide.

Second, the SECURE Act also eliminates the "one bad apple" rule. Employers participating in a MEP or PEP no longer have to worry that the tax-qualified status of the plan will be jeopardized due to the actions of other participating employers. In the event a given employer fails to take action to maintain the tax-qualified status of the plan, the MEP or PEP provider will have the ability to segregate the assets of the plan attributable to that employer into a separate trust or account to ensure that only that employer, and no other participating members of the plan, will be liable for any associated tax penalties or other costs of correction.

These provisions become effective for plan years beginning after December 31, 2020. Stay tuned for additional updates on the rollout of MEPs and PEPs, as additional guidance on these provisions is likely to be published during 2020.

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Increase in Cap for Automatic Enrollment for Safe Harbor Plans

Author: Caleb Anderson

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) includes a provision that impacts 401(k) plans that utilize the automatic enrollment safe harbor.

Under prior law, 401(k) plan sponsors could elect to use a safe harbor design that incorporates automatic enrollment and automatic escalation provisions. Prior to the SECURE Act, plans were permitted to increase participants' contribution rates over time, up to a maximum of 10% of compensation. Section 102 of the SECURE Act increases this limit to 15% of compensation.

As under prior law, any automatic increases are made annually at the beginning of the plan year and participants are allowed to opt out of the increase.

The increase in the maximum contribution rate, which is effective for plan years beginning after December 31, 2019, is optional. Sponsors of automatic enrollment safe harbor plans who wish to increase the maximum contribution rate above 10% of compensation may amend their plans to incorporate this change.

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103 SECURE Act

Rules Relating to Election of Safe Harbor 401(k) Status

Author: Noelle Harrold

The Setting Every Community Up for Retirement Act of 2019 (SECURE Act) contains a provision that gives employers more flexibility surrounding the election of safe-harbor status.

Under prior law, a 401(k) plan sponsor electing safe harbor status was required to send out a notice to all participants before the beginning of the plan year in which the election would be effective. The SECURE Act eliminates this notice requirement for non-elective safe harbor plans – that is, plans that provide safe harbor contributions in the form of a profit-sharing contribution rather than a matching contribution. The safe harbor notice requirement still applies to plans using the matching contribution safe harbor.

The SECURE Act also allows plan sponsors to make a retroactive election to add non-elective safe harbor provisions after a plan year has started. Effective for plan years beginning after December 31, 2019, an election to provide a traditional 3% non-elective safe harbor contribution must be made no later than 30 days before the end of the plan year to which the election will apply. Further, if the amount of the contribution is at least 4% of compensation, the safe harbor election may be made as late as the end of the next following plan year.

These changes add some much-needed flexibility to 401(k) plan administration, as they eliminate the need for plan sponsors to make decisions about safe harbor status before knowing whether the safe harbor election will even be necessary. For plan years beginning after December 31, 2019, employers will have the option of waiting to see whether the plan satisfies ADP nondiscrimination testing before deciding to make a non-elective safe harbor contribution. If, near the end of the plan year, the plan is anticipated to fail ADP testing based on current contribution levels, employers will now have four choices: (1) distribute excess deferrals to highly compensated employees as necessary to pass the ADP test, as under prior law; (2) make a qualified non-elective contribution to the non-highly compensated employees; (3) make a safe harbor contribution of 3% of compensation and elect safe harbor status no later than 30 days before the end of the plan year; or (4) wait until after the plan year has ended, then elect to make a safe harbor contribution of 4% of compensation or more.

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104 & 105 SECURE Act

Business Tax Credits for Retirement Plan Startup Costs and Automatic Enrollment Provisions

Author: Jason Lumpkin

In an effort to encourage employers to adopt a retirement plan and promote certain automated features, the Act (1) enhances an existing business tax credit relative to startup costs, and (2) implements a new credit for plans that utilize an automatic enrollment provision.

Effective for tax years beginning after December 31, 2019, the business tax credit associated with the startup costs will be increased from $500 to a maximum of $5,000. This credit is available to "small" employers with fewer than 100 employees, but is not available for solo 401(k) plans where participants in the plan comprise solely the owner (or sole proprietor or partner) and his/her spouse. The credit may be taken in the tax year it is actually incurred as well as the next two subsequent tax years. As such, any plan established during the 2017 tax year or later may be eligible for the increased credit amount.

The specific amount of the eligible credit is a function of the employer's demographics, providing a minimum credit of $500 or, if greater, $250 for each *non-highly compensated employee* who is eligible to participate in the plan up to a maximum of $5,000. In other words, to qualify for the maximum credit amount of $5,000, the newly established plan must be available for at least 20 *non-highly compensated employees*.

NOTE: For 2020, a *non-highly compensated employee* is any employee who earned less than $125,000 in 2019 (prior year), as indexed, and does **not** own 5% or more of the employer sponsoring the plan, either directly or indirectly via family attribution.

Further, those employers that include an automatic enrollment provision in the startup plan are eligible for an additional credit of $500. Similar to the startup credit, the automatic enrollment credit may be taken in the year that the plan/provision is effective as well as the next two subsequent tax years.

The automatic enrollment credit is also available for existing retirement plans that implement an automatic enrollment provision for tax years beginning after December 31, 2019.

These credits, when considered in combination with the expansion of multiple employer plans/pooled employer plans (as addressed in Section 101 of the Act), provide small businesses with compelling solutions for implementation costs, ongoing retirement plan service fees, and the administrative and fiduciary responsibilities that historically have deterred many businesses from implementing retirement plans.

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106 SECURE Act

Stipends Treated as Compensation

Author: Donna Wolfson

Several provisions of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) pertain to IRAs. One of these affects stipends and non-tuition fellowship payments received by graduate and post-doctoral students.

Prior to 2020 and the passage of the SECURE Act, these stipends, grants and benefits paid to aid a student in the pursuit of post-graduate study or research were not treated as compensation for purposes of making IRA contributions, since such contributions are only allowed to the extent that the taxpayer has sufficient compensation (i.e., earned income). Section 106 of the SECURE Act expands the definition of compensation so students may now begin saving for retirement earlier in their careers.

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Repeal of Maximum Age for Traditional IRA Contributions

Author: Tyler Brose

Prior to a repeal under the SECURE Act, an individual was not permitted to contribute to a traditional IRA after age 70½. Now, however, that restriction has been lifted, and individuals who are still working and receiving earned income can continue saving for retirement, regardless of age.

With Americans living longer and often needing to work into later years, the change is welcome, since it allows individuals to continue retirement savings. A key benefit, of course, of contributing to a traditional IRA is that such designations are tax-deductible, meaning they could reduce modified adjusted gross income for that current year.

The change aligns the traditional IRA more closely with the Roth IRA, which allows anyone to contribute regardless of age, as long as the individual has earned income below specified limitations.

The repeal also has an ancillary impact on rules surrounding Qualified Charitable Distributions, which can be ordered to be paid directly from an IRA to a qualified charity by an individual who is at least age 70½. The IRA holder may exclude the amount of the QCD from taxable income, up to a maximum of $100,000 per year.

The SECURE Act didn't change the QCD rules, but with the repealed age restrictions on IRA contributions, an individual is now able to contribute to an IRA and take a QCD in the same year. In this event, the IRA contribution will reduce the QCD exclusion by the amount contributed.

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Qualified Employer Plans Prohibited from Making Loans Through Credit Cards and Similar Arrangements

Author: Susan Paulauskas

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) includes a provision that prohibits the distribution of plan loans through credit cards or similar arrangements.

In recent years, some plan administrators have begun allowing participants to link a credit or debit card to their 401(k) account, with any purchases made using the card taken as a loan against their 401(k) balance. While plan loans are generally permitted for any purpose provided the terms and amount of the loan fall within prescribed limits, the use of credit cards has raised concerns that such easy access to plan loans could lead participants to deplete their retirement savings by making small or routine purchases.

The prohibition on the use of credit cards, which applies to loans from all qualified plans, takes effect immediately. Any future purchases made with a credit card linked to a retirement plan account will be treated as a taxable distribution rather than a loan, which could in turn trigger additional qualification failures if the participant was not eligible for an immediate distribution at the time the purchase was made. Plans with a credit card program in place should take immediate steps to deactivate the cards and notify participants how to take plan loans through other means.

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109, 203 & 204 SECURE Act

Lifetime Income Options

Author: Scott Rain

Employer-based retirement systems have moved away from traditional pension plans that provide a lifetime stream of annual or monthly payments, which has led to concerns that employees approaching retirement may not be adequately prepared to face a lack of consistency in their month-to-month income. To help counteract this trend, the SECURE Act includes several provisions that encourage both employers and participants to take advantage of lifetime income options, including new income portability design features, new participant disclosure requirements, and safe harbor guidelines for the selection of a lifetime income provider.

Effective for plan years beginning after 2019, the SECURE Act provides for an exception to any limit on in-service distribution options if a lifetime income option is no longer available under a plan. In those cases, the plan can allow distributions to another employer retirement plan or individual retirement account, or may allow distributions of a lifetime income investment in the form of a qualified annuity if the distribution is made within the 90-day period following the date the lifetime income investment is no longer an option under the plan.

Upon the issuance of applicable guidance from the Department of Labor, employers must include, in at least one participant benefit statement issued during any 12-month period, a lifetime income disclosure, the purpose of which will be to provide an estimate of what the participant could receive from the plan if their benefits were paid in the form of an annuity.

Lastly, under the rules and regulation of ERISA, plan fiduciaries must prudently select and monitor plan investment options. While existing regulations provide a safe harbor with respect to the selection of an annuity provider, the SECURE Act specifies optional steps that a plan fiduciary may take in selecting an insurer in order to fulfill ERISA requirements. The prudent steps include engaging in an objective search for potential insurers, evaluating the costs of the contract and concluding that the insurer is financially capable of meeting its obligations and that the costs are reasonable. This safe harbor will limit the potential exposure faced by plan fiduciaries when selecting a lifetime income provider.

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

Author: Shad Fagerland

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) includes a provision that makes it easier for plan sponsors to terminate a 403(b) plan.

Contributions to a 403(b) are typically held in one of two types of annuity contract: a group contract, issued in the name of the plan to hold assets attributable to multiple plan participants, or an individual contract, issued in the name of an individual participant. Assets held under an individual contract are effectively beyond the control of the plan administrator, particularly in the case of former employees, who may have transferred the assets to a different provider.

Terminating a 403(b) has historically been challenging for plans utilizing individual contracts. Because a plan is not considered formally terminated until all assets have been distributed, sponsors of a terminated 403(b) faced the risk that until all holders of individual contracts have been identified and provided with distribution paperwork, the plan might still be treated by the IRS as an ongoing plan that remains subject to applicable reporting rules and other administrative burdens.

Section 110 of the SECURE Act directs the Department of the Treasury to issue regulations providing that in the case of a terminated 403(b) plan, any holder of an individual contract would be treated as having received a distribution of their account for purposes of effectuating the termination of the plan. Guidance is to be published within six months of the passage of the SECURE Act and would be retroactive as far back as 2008. This change comes as welcome news to sponsors of 403(b) plans. Keep an eye out for further updates when the Treasury guidance is released.

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111 SECURE Act

Church-Controlled Organizations: Clarification of Retirement Income Account Rules Under the Secure Act

Author: Donna Wolfson

Section 111 of the Setting Every Community Up for Retirement Enhancement (SECURE) Act clarifies who may be covered under retirement plans that are maintained by church-controlled organizations. But what exactly is a "church-controlled organization?"

According to the IRS, church-controlled organizations can be considered either qualified or nonqualified. A qualified church-controlled organization (QCCO) is also considered to be a church-controlled 501(c)(3) tax-exempt organization, and typically does not offer any type of services or goods for sale to the public. They have less than 25% of all financial support coming from government grants or from goods and services that derive from business activity. Examples of QCCOs are seminaries, General Assembly agencies and entities, churches, and church-related primary and secondary schools.

A nonqualified church-controlled organization (NQCCO) refers to a tax-exempt organization that offers goods, services and facilities for sale. They'll normally have more than 25% of all revenue coming from government sources or the sale of goods or services. Examples of NQCCOs are church-affiliated hospitals, universities, children's homes and retirement housing facilities.

Before the enactment of the SECURE Act, the IRS opined that certain NQCCOs – including church-related nursing homes, daycare centers, summer camps, preschools, colleges, universities, hospitals and other social service organizations – shouldn't sponsor church retirement income plans under Section 403(b)(9) of the Internal Revenue Code. As a result, employees of these NQCCOs stood to lose access to such plans. The SECURE Act clarifies who may be covered under plans maintained by church-controlled organizations. It includes the following:

- Duly ordained, commissioned or licensed ministers, regardless of the source of compensation;
- Employees of tax-exempt organizations controlled by or associated with a church or a convention or association of churches; and
- Certain employees who separate from service with a church, a convention or association of churches or an organization described above.

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112 SECURE Act

Part-Time Employee Participation

Author: Caleb Anderson

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) includes a provision that would require 401(k) plans to cover certain part-time employees who were previously excludable.

Under prior law, 401(k) plans were permitted to exclude employees who failed to complete at least 1,000 hours of service in a 12-month eligibility period. Section 112 of the SECURE Act provides that, for plan years beginning after December 31, 2020, 401(k) plans must also cover part-time employees who completed at least 500 hours of service each year for three consecutive years and are age 21 or older. The provision also stipulates that service prior to January 1, 2021 is not counted for purposes of this new rule, meaning that January 1, 2024 is the earliest anyone could qualify for participation under the new regulation.

An employer may elect to exclude these participants from safe harbor contributions, nondiscrimination testing and top-heavy requirements, but if the employer provides matching or non-elective contributions, participants must be credited with a year of vesting service for each year in which they complete more than 500 hours of service.

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113 SECURE Act

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

Author: Susan Paulauskas

The SECURE Act contains a number of provisions aimed at expanding Americans' access to their retirement accounts. One such new viable option adds an exception under which 401(k) participants and IRA owners can withdraw up to $5,000 for expenses related to a qualified birth or adoption. Under the arrangement, the 10% early withdrawal penalty is waived, but applicable income taxes (including capital gains taxes) still apply at the individual's ordinary income rate.

The new provision is effective for distributions made after December 31, 2019. However, in order to qualify for the exception, the distribution must be made during the one-year period beginning on the date on which the living child is born (stillborn children don't qualify) or the adoption (adoptees must be under 18) is finalized, which means it can't be used for costs incurred leading up to a planned birth or adoption.

New parents can opt to repay the withdrawal amount; it is not considered a loan and would be treated as a rollover.

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114 SECURE Act

Increase in Age for Required Minimum Distributions

Author: Susan Paulauskas

The SECURE (Setting Every Community Up for Retirement Enhancement) Act institutes a number of changes for retirement plan sponsors and participants, including the ability for participants to delay their required minimum distributions, or RMDs, to age 72.

Before the SECURE Act, if you had money in a traditional IRA or an employer-sponsored retirement plan, you were required by law to start taking withdrawals by April 1 following the year you attained age 70½. The minimum amount required to be distributed each year was calculated based on the account balance as of the end of the previous calendar year divided by a distribution period from the IRS's *Uniform Lifetime Table*.

The SECURE Act changes the required starting date for RMDs from age 70½ to age 72, and is applicable to those individuals who turn 70½ after December 31, 2019. **For anyone who turned 70½ in 2019, the first RMD must still be taken by April 1, 2020.** Individuals turning 70½ in 2020 or later will not be required to take their first withdrawal until April 1 of the year following their 72nd birthday. Please note, plan sponsors can still elect to require distributions at an earlier age and, depending on the terms of the plan, individuals may still be able to take money out at 70½, but the new legislation makes that an individual choice and not a requirement.

A notable impact for plan sponsors will be the need to evaluate the new RMD rule and amend plan documents accordingly to reflect the new RMD age of 72. In addition, plan sponsors will also need to evaluate, and likely update, their current policies and procedures for notifying participants of an upcoming RMD.

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Pension Funding Relief for Community Newspaper Plans

Author: Anthony Margiotta

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) includes a provision that provides welcome relief to sponsors of pension plans in the family-owned, non-publicly traded independent community newspaper industry. While such plans represent only a small segment of the retirement plan network, some note that issues within the industry are a reflection of funding issues faced on an annual basis by many pension plan sponsors.

For instance, sponsors of defined benefit pension plans are required to make contributions based on the presumed future assets and liabilities of the plan, calculated on the basis of certain actuarial assumptions. Under the new provisions of the SECURE Act, community newspaper pension plans are permitted to increase the assumed interest rate used to calculate their funding obligations from 7% to 8%. In conjunction, the legislation also provides an extension of the shortfall amortization period from seven years to 30 years, though the change is only allowed for plans that have no increases in accrued benefits after December 31, 2017.

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131 SECURE Act

Treating Excluded Difficulty of Care Payments as Compensation for Determining Retirement Contribution Limitations

Author: Donna Wolfson

Many home healthcare workers do not have taxable income because their only compensation comes from "difficulty of care" payments that are exempt from taxation under Internal Revenue Code Section 131. As such, these payments are also not eligible to be contributed to an IRA or a qualified retirement plan.

"Difficulty of care payments" is defined in Code Section 131(c)(1)(A) as "compensation for providing the additional care of a qualified foster individual." In other words, if you provide care in your home to an individual who has a physical, mental or emotional handicap, including payments received for caring for foster children, the income you receive is excluded from taxable income.

Now, however, under Section 116 of the Setting Every Community Up for Retirement Enhancement (SECURE) Act, home healthcare workers are able to contribute to an IRA or qualified retirement plan because the provision amends Code Sections 415(c) and 408(o) to state that tax-exempt "difficulty of care payments" are treated as compensation for purposes of calculating the contribution limits to DC plans and IRAs.

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Special Disaster-Related Rules for Use of Retirement Funds

Author: Susan Paulauskas

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) includes special disaster-related rules for the use of retirement funds.

New provisions provide temporary relief to taxpayers whose principal residence lies in an area affected by certain qualified major disasters, as well as to disaster relief workers and certain others impacted by catastrophe. This includes reprieve from the 10% early withdrawal penalty typically assessed when taking a qualified disaster relief distribution. The relief applies to up to $100,000 of distributions from employer-sponsored retirement plans and IRAs, provided the distributions are taken within six months of the passage of the SECURE Act (that is, by June 19, 2020).

Distributions may be subsequently repaid into a qualified plan or IRA, while those distributions not repaid may be taken into income ratably over a three-year period. Individuals may also repay hardship distributions for cancelled first-time home purchases due to a qualified disaster.

The SECURE Act also makes additional plan loan amounts available to participants whose principal residence sustains an economic loss by reason of a covered disaster. Plan loans have typically been limited to no more than $50,000, but the SECURE Act increases this limit to $100,000 for qualifying participants. The Act also extends for one year (or, if later, until June 17, 2020) the due date of any qualified individual's loan repayment that would otherwise be due during the period beginning on the date of the disaster and ending (180) days after the last day of the disaster.

Lastly, the SECURE Act provides an automatic extension of certain filing deadlines for individuals and employers affected by disasters. The extension applies to filing returns and paying taxes, making contributions to qualified plans and IRAs, withdrawing excess IRA contributions and completing rollovers.

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Plan Adopted by Filing Due Date for Year May Be Treated as In Effect as of Close of Year

Author: Noelle Harrold

The SECURE Act contains a provision that grants employers additional time to adopt a qualified retirement plan. Under current law, in order to make tax-deductible contributions to a retirement plan for a taxable year, an employer must formally adopt the plan no later than the last day of that taxable year. Section 201 of the SECURE Act provides that a retirement plan may be treated as if it is effective for a taxable year so long as the plan is adopted before the due date of the employer’s tax return (including extensions) for that year.

The new provision applies to plans adopted after December 31, 2019. It grants employers additional time to establish a qualified plan and gives employees the opportunity to receive contributions for that taxable year. The provision will benefit both employers looking to establish a qualified retirement plan and employees looking to save for their retirement. For example, if an employer finds itself with extra cash in April 2020 after the books are closed for the 2019 fiscal year, the new provision would allow the employer to establish a retirement plan and make a tax-deductible contribution that relates back to 2019.

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Combined Annual Report for Group of Plans

Author: Caleb Anderson

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) includes provisions that would permit certain retirement plans to file Form 5500 annual reports on a consolidated basis.

Section 202 directs the IRS and Department of Labor to develop consolidated filing procedures for groups of similar plans. Consolidated filing will be available to defined contribution plans that have the same trustee, fiduciary, plan administrator, plan year and investments or investment options. Governmental or church plans may be included if the same person completes the filing.

The change will reduce administrative costs involved in completing and filing Form 5500s, making it easier for smaller employers to sponsor a retirement plan. The new consolidated filing procedures will not become effective until guidance is published by the IRS and Department of Labor; stay tuned for further updates.

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205 SECURE Act

Modification of Nondiscrimination Rules to Protect Older, Longer-Service Participation

Author: Caleb Anderson

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) includes provisions that grant nondiscrimination testing relief for certain frozen defined benefit (DB) pension plans.

Under current law, all retirement plans are required to pass nondiscrimination tests to maintain their tax qualification status. However, in cases involving closed or “frozen” DB plans where no new entrants are accepted, it can become difficult to pass such testing due to long-term participants becoming older and earning higher wages.

Section 205 of the SECURE Act creates a safe harbor, deeming frozen DB plans as automatically passing benefits, rights and features testing and the minimum participation rule as long as the plan passed the test in the year it was frozen and the two succeeding years. The SECURE Act also allows closed DB plans to be tested with a DC plan that includes a match or ESOP feature.

These modifications will protect the benefits of older participants as they near retirement by allowing them to continue to accrue benefits. The provision became effective December 20, 2019; affected plans may be amended at any time to incorporate the new safe harbor testing relief.

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Modification of PBGC Premiums for Cooperative and Small Employer Charity Plans

Author: Donna Wolfson

Many charities and cooperative associations provide their employees with retirement benefits through defined benefit multi-employer pension arrangements known as Cooperative and Small Employer Charity ("CSEC") plans. The Cooperative and Small Employer Charity Pension Flexibility Act ("the Act"), ratified in 2014, provides the capability for small, community-focused employers to pool their resources and achieve economies of scale otherwise only available to large employers. As defined benefit plans, they are subject to their own minimum funding standards, and plan assets are insured by the Pension Benefit Guaranty Corporation (PBGC).

A bit of history helps explain how the Act came to fruition. Congress had determined that the funding rules enacted under the Pension Protection Act of 2006 were inappropriate for the structure of CSEC plans, recognizing that the plans would be forced to either divert money from services to pay PBGC premiums and fund the plans or, worse, be unable to continue to provide pension benefits.

So, in March of 2014, Congress passed the Cooperative and Small Employer Charity Pension Flexibility Act, which implemented funding rules that better reflected the unique design of CSEC plans. But the formula for determining the cost of insurance premiums paid to the PBGC remained the same. As a result, between 2014 and 2018, the PBGC realized a 3,000% return on the premiums paid by the CSEC plans.

Modifications to the Act now reduce PBGC premiums for CSEC plans to $19 per participant for flat-rate premiums, and $9 per $1,000 of unfunded vested benefits for variable-rate premiums. The provision is effective for plan years beginning after December 31, 2018. Since most CSEC plans have already paid 2019 premiums, these plans will be eligible for a refund. By comparison, in 2020, single-employer defined benefit plans are subject to flat-rate premiums of $83 per participant and variable-rate premiums of $45 per $1,000 of unfunded vested benefits (with a per person cap of $561).

Congressman Mike Kelly of Pennsylvania was one of the House of Representative members instrumental in reducing the PBGC premiums for these CSEC plans.

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301 SECURE Act

Benefits for Volunteer Firefighters and Emergency Medical Responders

Author: Donna Wolfson

Back in 2007, the Volunteer Responder Incentive Protection Act (VRIPA) was enacted, exempting property tax benefits and up to $600 per year of other incentives that volunteer fire and EMS personnel receive as reward for their services from being subject to federal income tax and reporting requirements. VRIPA became law in 2008, but expired at the end of 2010.

Section 301 of the Setting Every Community Up for Retirement Enhancement (SECURE) Act reinstates for one year (the 2020 tax year) the exclusions for qualified state or local tax benefits and qualified reimbursement payments provided to members of certified volunteer emergency response organizations, and increases the exclusion for qualified reimbursement payments to $50 for each month during which a volunteer performs services. These provisions are included in the underlying Protecting Volunteer Firefighters and Emergency Responders Act.

Pennsylvania congressman Mike Kelly was one of two bipartisan cosponsors of a standalone VRIPA bill (H.R. 1241), introduced in the House of Representatives in February to make these benefits permanent. The National Fire Protection Association (NFPA) is hoping that enactment of the SECURE Act will improve the chances of getting the bill passed in Congress. NFPA estimates the value of services provided by volunteer firefighters in the U.S. at approximately $46.9 billion annually.

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Expansion of Section 529 Plans

Author: Matt Biggs

Well established and evolved over the years, 529 plans are tax-advantaged strategies designed to encourage saving for future education costs. Withdrawals from a 529 plan are excludable from income as long as the withdrawals are used to pay qualified educational expenses. New legislation covered under the SECURE Act expands that list of qualifying expenses to include costs associated with registered apprenticeships, homeschooling and private elementary, secondary or religious schools, as well as up to $10,000 of qualified student loan repayments.

The most notable expansion of the plan is that ability to use 529 funds to make student loan payments. The $10,000 is a lifetime limit, which applies to the 529 account beneficiary and each and any of their siblings. For example, a parent with four children may take a $10,000 distribution to pay loans for each child, totaling $40,000.

The added inclusion of apprenticeships covers expenses like fees, books, supplies and any other equipment required for participation in a qualified program that allows an individual to obtain paid work experience, classroom instruction and a portable credential. The expansion creates flexibility for parents of those children who elect an alternative to traditional higher education.

All these changes help address one of the biggest concerns for families looking to start a 529 plan, the worry that they'll have funds leftover after the beneficiary graduates. The expansion of 529 rules made by the SECURE Act provides more options for families to distribute excess funds without incurring penalties.

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Modification of Required Minimum Distribution Rules for Designated Beneficiaries

Author: Scott Rain

Based on the new provisions of the SECURE Act, there are now much more restrictive rules surrounding a required minimum distribution (RMD) to designated beneficiaries of retirement accounts. Under the updated rules, most non-spouse IRA and retirement plan beneficiaries will have to take distributions from inherited retirement accounts within 10 years after the account owner's death.

Prior to the Secure Act, RMD rules permitted non-spouse beneficiaries to take distributions from an inherited IRA or retirement plan over their life expectancy beginning with the year following the year the account owner died. As such, to the extent an individual inherited an IRA from a grandparent, there existed the ability to draw out or stretch the distributions over an extended period. For example, if you inherited an IRA at the age of 40, the current IRS life expectancy table says you have 43.6 years to live. Therefore, you must start taking annual RMDs from the inherited account by dividing the account balance as of the end of the previous year by your remaining life expectancy as of the end of the current year. Your second RMD would equal the account balance as of the end of the following year divided by 42.6, and the pattern would continue until the account balance was depleted.

The new 10-year distribution rule significantly limits the stretch IRA strategy outlined above. It can still work, but only in the limited circumstances when the 10-year rule does not apply.

The Secure Act's RMD change will not affect accounts inherited by a so-called eligible designated beneficiary, namely one who is: (1) the surviving spouse of the deceased account owner, (2) a minor child of the deceased account owner, (3) a beneficiary who is no more than 10 years younger than the deceased account owner, or (4) disabled or chronically ill individuals.

The new 10-year rule generally applies regardless of whether the account owner dies before or after his or her RMD required beginning date. Following the death of an eligible designated beneficiary, the account balance simply must be distributed within 10 years. Further, when an account owner's child reaches the age of majority under applicable state law, the account balance must be distributed within 10 years after that date.

Effective date: The Secure Act's RMD change is generally effective for RMDs taken from accounts whose owners die after 2019. RMD rules for accounts inherited from owners who died before 2020 remain unchanged.

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402 SECURE Act

Increase in Penalty for Failure to File

Author: Noelle Harrold

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) contains a provision that increases penalties for failure to file federal tax returns in a timely manner. The change applies to returns that are due beginning in 2020, including any extensions, which means these enhanced penalty amounts apply to 2019 returns.

Under prior law, the penalty for filing a late federal tax return was the lesser of 5% of the unpaid taxes or $330 for each month the tax return was late, subject to a total cap of 25% of the unpaid taxes. With Section 402 of the SECURE Act, the minimum monthly penalty increases to the lesser of 5% of the unpaid taxes or $435, subject to adjustment for inflation in future years.

Added to the SECURE Act as a revenue raiser, this provision will not be welcomed by taxpayers. Fortunately, the change impacts only the minimum monthly penalty for late filing and not the aggregate cap of 25% of any taxes due.

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Increased Penalties for Failure to File Retirement Plan Returns

Author: Noelle Harrold

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) contains a provision that substantially increases penalties for late filing of certain retirement plan-related returns and notices.

Under current law, penalties may be imposed on plan sponsors who fail to file certain required forms and notices in a timely manner. Section 403 of the SECURE Act increases those penalties for failure to file three specific items: the plan annual return (Form 5500); the registration statement identifying terminated participants entitled to defer vested benefits; and withholding notices for plan distributions.

The penalty for filing Form 5500 late has increased from $25 per day (subject to a maximum of $15,000) to $250 per day (subject to a maximum of $150,000); the fee for late filing of the registration statement has been elevated from $1 per participant per day (subject to a maximum penalty of $5,000) to $10 per participant per day (subject to a maximum penalty of $50,000); and the penalty for failure to provide a withholding notice on time has been raised from $10 per participant (subject to a maximum of $5,000 per year) to $100 per participant (subject to a maximum of $50,000 per year).

The increased penalty amounts are effective for those returns and notices required to be filed after December 31, 2019, and will thus apply to Form 5500s filed in 2020 relating back to the 2019 plan year. Plan sponsors should be careful to submit these returns on a timely basis, as the potential liability for late filing has now increased tenfold.

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