

SECURE Act

Setting Every Community Up for Retirement Enhancement (SECURE) Act

Congress recently passed the SECURE Act. The Act is a significant piece of retirement legislation that is intended to make it easier for businesses to offer retirement plans and for individuals to save for retirement. The Act puts in place numerous provisions intended to strengthen retirement security for everyone.

Key features of the SECURE Act include:

FOR INDIVIDUALS:

Required Minimum Distributions (RMDs)

The age triggering the RMD beginning date for IRAs and Qualified Plans will increase to 72. This change applies to distributions required after 12/31/2019, with respect to individuals who attain age 70 ½ after such date. This change does not apply to IRA owners and participants who reached age 70 ½ in 2019 or earlier.

“Stretch” RMD

Upon the death of an IRA owner or Qualified Plan Participant, the beneficiary would be required to draw down their entire inherited interest within 10 years; no longer over the beneficiary's life expectancy. The 10 year rule does not apply to:

- A surviving spouse of the IRA owner or plan participant
- A child under the age of majority (note: the 10 year rule would apply once the child reaches the age of majority)
- A person who is 10 or less years younger than the IRA owner or participant
- Anyone who is disabled or chronically ill.

These changes are generally effective with respect to deaths occurring after 12/31/2019.

Post 70 ½ IRA Contributions

For taxable year 2020 and beyond, the Act allows anyone that is working and has earned income to contribute to a traditional IRA regardless of age. You are able to keep contributing to your IRA after age 70 ½ for as long as you are still working and have sufficient earned income. Note, however, if you make tax deductible traditional IRA contribution after age 70 ½, the amount you can exclude from your taxable income as an IRA qualified charitable distribution will generally be reduced. These changes do not apply to contributions for tax year 2019, including contributions made between January 1 and April 15, 2020.

Penalty-Free Birth or Adoption Withdrawals

With the birth or adoption of a child, the Act allows penalty-free qualified birth or adoption distributions of not more than \$5,000 during the one year period beginning on the date on which a child is born or an adoption is finalized. This change applies to distributions made after 12/31/2019.

Section 529 Plans

Plans covered by Section 529 of the Code generally allow for advantageous tax treatment for qualified tuition programs.

The Act allows distributions from Section 529 plans to receive federal income tax-free treatment for (i) fees, books, supplies and equipment required in certain apprenticeship programs and (ii) up to \$10,000 (lifetime limit per individual) used to pay principal or interest on qualified educational loans. These changes apply to distributions made after 12/31/2018.

FOR BUSINESSES:

Small Business Benefits Tax Credits

Among the provisions to assist small businesses, the SECURE Act includes:

- An increase in the small business retirement plan tax credit for plan startup costs in order to make setting up retirement plans more affordable for small businesses
- An additional tax credits to encourage small businesses to adopt automatic enrollment arrangement for 401(k) or SIMPLE IRA plans

Qualified Plan Provisions

Among the provisions to assist employers in becoming Qualified Plan Sponsors, the SECURE Act will:

- Expand opportunities for employers to join Multiple Employer Plans (MEPs) - plans jointly sponsored and maintained by more than one employer.

- Simplify rules and notice requirements related to qualified non-elective contributions in Safe Harbor 401(k) Plans
- Permit an employer to adopt a qualified retirement plan after the close of the taxable year as long as it is adopted before the deadline for filing the employer's tax return (with extensions).

Qualified Plan Amendment

The Act provides for a remedial amendment period for any required plan amendments. The period for most calendar year plans runs until December 31, 2022.

Fiduciary Safe Harbor for Selection of Lifetime Income Provider

In 2008, the Department of Labor finalized a regulation establishing a safe harbor for the selection of annuity providers by plan fiduciaries, given the long-term nature of the contract often under consideration. The regulation led many to conclude that it was impractical or too limited in its protections with regard to a fiduciary's duty of prudence in the selection process particularly in evaluating the financial capabilities and long-term integrity of the insurer.

The Act provides steps that a fiduciary can take to fall within a safe harbor when selecting an insurer for guaranteed retirement annuity contracts. In particular, the fiduciary will be deemed to ERISA's duty of prudence requirement if the fiduciary engages in an objective, thorough and analytical search, considers the financial capability of insurers found to satisfy the obligations of the annuities and concludes that the insurer is capable of satisfying such obligations at the time of selection. In reviewing

the financial capability of an insurer, the fiduciary will be allowed to rely on certain written representations from the insurer. By following the safe harbor provisions, a fiduciary will not be liable for losses that result to a participant (or beneficiary) due to an insurer's inability to satisfy its financial obligations under the annuity contract.

This document does not reflect all the provisions of the SECURE Act.

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