



## Retirement Times

NEWS AND UPDATES FOR RETIREMENT  
PLAN SPONSORS AND FIDUCIARIES

### SUMMER HOMEWORK FOR FIDUCIARIES

As you bask in the glory of summer over the next couple of months, don't forget the three Fs that define this cherished season – fun, Fourth of July, and fiduciary! While you're enjoying the fruits of summer, don't forget your fiduciary responsibilities! Ask yourself the following questions to make sure you are on top of your responsibilities and liabilities.

1. Are you practicing procedural prudence when making plan management decisions?
2. Do you clearly understand the DOL's TIPS on selecting and monitoring your QDIA in order to obtain fiduciary protection?
3. Are you documenting each plan management decision and its support?
4. Are you familiar with current trends in fiduciary litigation?
5. Are you certain that your plan is being administered in accordance with your plan document provisions?
6. What fiduciary liability mitigation strategies are you following? (Fiduciaries are personally financially responsible for any fiduciary breaches that disadvantage participants.)
7. Are you kept abreast of regulatory changes?
8. Are you appropriately determining reasonableness of plan fees, services and investment opportunities?
9. How do you define "success" for your plan and what metrics do you use to track progress?
10. Is your current plan design communicating the appropriate messaging to encourage success for your participants and plan fiduciaries?
11. Is your menu efficiently designed for benefit of participants and plan fiduciaries?
12. Are you certain you are providing all required communications and distributions to plan participants (including former participants with account balances)?



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13. Are you handling missing participants appropriately?
14. Are you appropriately monitoring and documenting your fiduciary activities and those of your service providers?
15. Are you maintaining plan records appropriately?

Many fiduciaries are unaware of their fiduciary responsibilities or do not understand them. As you contemplate these important questions while staying cool this summer, if you need help uncovering the answers to any of these important questions, do not hesitate to ask your plan advisor.

## THE SECURE ACT

*Legislation to help Americans save more for retirement*

It's no secret that Americans are not saving enough for retirement. The U.S. Government Accountability Office (GAO) recently reported that 48 percent of households aged 55 and over have no retirement savings.<sup>1</sup>

To address this issue, a new retirement-related bill is making its way through Congress, The Setting Every Community Up for Retirement Enhancement (SECURE) Act. Its purpose is to help Americans save more for retirement by creating new rules to expand and preserve retirement savings, improve the administration of retirement plans, provide additional benefits and create revenue provisions.

Highlights of the Act include:<sup>2</sup>

### **Increase Auto Enrollment Safe Harbor Cap**

Qualified automatic enrollment arrangements (QACAs) would be able to auto increase employee deferrals up to 15 percent instead of the currently required 10 percent cap.

### **Pooled Employer Plans (aka Open MEPs)**

The legislation will allow for a new type of plan whereby unrelated employers could pool their resources to optimize buying power in a new type of plan called a "pooled employer plan" (PEP). By and large, the PEP is what was previously referred to as an open multiple employer plan (open MEP). Open MEPs were an issue that PEPs are designed to remedy. PEPs would be treated as a single plan under ERISA. The legislation also purports to eliminate the "one bad apple" rule whereby the qualification issue of one



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adopting employer would not taint the qualified status if the entire PEP for the remaining adopting employers.

## **Increase Credit Limit for Small Employer Plan Start-Up Costs**

To make it more affordable for small businesses to implement retirement plans, the legislation will increase the credit for small businesses by changing the calculation of the flat dollar amount limit on the credit to the greater of (1) \$500 or (2) the lesser of (a) \$250 multiplied by the number of non-highly compensated employees of the eligible employer who are eligible to participate in the plan or (b) \$5,000. The credit applies for up to three years.

## **Child Birth or Adoption Withdrawals**

The SECURE Act would allow participants to take up to \$5,000 from their plan or IRA for birth, or adoption, related expenses incurred within a year of the action. These could be taken on a penalty-free basis.

## **Small Employer Automatic Enrollment Credit**

The legislation will create a new tax credit of up to \$500 per year to small employers to provide for startup costs for new 401(k) plans and SIMPLE IRA plans that include automatic enrollment.

## **Allowing Long-Term and Part-Time Workers to Participate In 401(k) Plans**

Under current law, employers are not required to include part-time employees (those working less than 1,000 hours per year) in their defined contribution plan. The legislation will require employers maintaining a 401(k) plan to have at least a dual eligibility requirement under which an employee must complete either one year of service (with the 1,000-hour rule) or three consecutive years of service where the employee completes at least 500 hours of service, except in the case of collectively bargained plans. For employees that are eligible based solely on the second new rule, employers may exclude those employees from testing under the nondiscrimination and coverage rules and from the application of top-heavy rules. In addition, those employees that are eligible based solely on the second new rule may be excluded from employer contributions.

## **Other Changes**

Other changes such as increased filing failure penalties, PBGC premiums, 529 plans, some tax implications to certain identified individuals, and church plans are also included in the legislation.

The logo for Retirement Times, featuring a stylized 'X' shape composed of three overlapping, semi-transparent blue rectangular bands. The text 'Retirement Times' is written in a bold, white, sans-serif font across the center of the 'X'.

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It's important to note that the SECURE Act is not yet finalized and has not been signed into law. As always, we will stay abreast of the legislation and will inform you when any significant changes are made.

<sup>1</sup><https://www.gao.gov/assets/700/697898.pdf>

<sup>2</sup><https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SECURE%20Act%20section%20by%20section.pdf>

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