

THE NEW RULES

A SUMMARY OF THE SECURE ACT

On December 20, 2019, the Setting Every Community Up for Retirement Enhancement (SECURE) Act was signed into law. The SECURE Act is the first major piece of legislation affecting retirement plans since the Pension Protection Act of 2006. While some of the details still need to be clarified by various government agencies, the new law makes significant changes in a number of retirement and tax planning areas. There are 29 provisions in the act. Here is a summary of 12 of them, what is changing, and when they go into effect.

EMPLOYER-SPONSORED PLAN CHANGES

OPEN MULTIPLE EMPLOYER PLANS (MEPs)

Under current law, only businesses that have a common business interest are able to participate in a multiple employer plan (MEP). The SECURE Act allows for "open MEPs" allowing unrelated businesses to participate in a pooled employer plan, even if there is no common connection with the businesses. This will allow several businesses to participate in one pooled plan for reduced cost and possibly reduced fiduciary liability. This change becomes effective in 2021.

INCREASED TAX CREDIT FOR EMPLOYER-SPONSORED PLAN ADOPTION

Under old law, if an employer with less than 100 employees adopted an employer-sponsored retirement plan, they were eligible for a \$500 tax credit in the year of adoption and the following two years. The SECURE Act increases this tax credit. Starting in 2020, the credit will be the lesser of: \$250 times the number of non-highly-compensated employees eligible to participate in the plan; or \$5,000. Employers with less than two non-highly-compensated employees are still eligible for a minimum credit of \$500. The credit is still available in the year of adoption and the following two years. The increased credit is intended to help offset the costs of establishing a retirement plan.

AUTOMATIC ENROLLMENT TAX CREDIT

The SECURE Act introduces a new \$500 tax credit for employers who add automatic enrollment to their retirement plan or adopt a plan with automatic enrollment. Starting in 2020, the credit is available in the first year the sponsor includes an automatic enrollment arrangement and the following two years.

ANNUITIES IN EMPLOYER-SPONSORED PLANS

In the past, few plans offered these types of lifetime income products because of fear of liability. The SECURE Act updated the safe harbor rules to now allow plan sponsors to offer these products without being held liable if the insurance company offering the products becomes insolvent. This should increase the number of plans with these offerings due to the decrease in liability on the plan sponsor.

LIFETIME INCOME DISCLOSURE

The SECURE Act implements a new requirement on defined contribution plans, such as 401(k), profit sharing, and 403(b). The requirement states that a participant's statement must not only provide the current value, it must also state the lifetime income that could be derived from the value by purchasing a lifetime annuity. The Department of Labor (DOL) still needs to finalize details on how this formula will work. This requirement will go into effect 12 months after the DOL issues guidance.

LONG-TERM, PART-TIME EMPLOYEES

Under current law, an employee must work at least 1,000 hours in a given year to participate in an employer-sponsored plan. The SECURE Act changes the rules to allow employees with at least 500 hours of service in three or more years to participate in the plan. It does not, however, make them eligible for employer contributions, and these individuals can still be excluded in plan testing. This change goes into effect in 2021, though the plan sponsor can ignore years of service prior to 2021 for the three-year rule.

CONTRIBUTION AND DISTRIBUTION CHANGES

REMOVAL OF AGE LIMIT FOR TRADITIONAL IRA CONTRIBUTIONS

Under old law, starting in the year someone turned 70½ and every year after, individuals could not make contributions to traditional IRA accounts. Strangely, this prior restriction was placed on traditional IRAs but not on Roth IRAs. The SECURE Act, removes this age restriction and allows individuals to continue making contributions to traditional IRA accounts as long as they continue to have earned income. This change will go into effect for all contribution years after December 31, 2019.

INCREASE TO REQUIRED MINIMUM DISTRIBUTION (RMD) AGE

Under old law, individuals have been required to start taking RMDs from qualified retirement accounts, such as 401(k)s, 403(b)s, and some IRAs, beginning at age 70½. The SECURE Act increases the RMD beginning date to age 72. The change will apply to anyone who turns 70½ after December 31, 2019. Those who turned 70½ prior to January 1, 2020 will need to take RMDs under the old rules.

ELIMINATION OF QUALIFIED STRETCH

Under old law, a designated beneficiary (a living person) of an inherited qualified retirement account, such as a 401(k), 403(b), or IRA, had the ability to “stretch” the distributions from that account over their life expectancy as determined by IRS Table 1. The SECURE Act changes the maximum distribution period of these accounts to 10 years, meaning the account has to be liquidated by the end of the year, 10 years after the death of the original owner. There is no requirement that payments be taken every year, just that the account has to be fully liquidated by the end of the 10-year period.

There are exceptions to the 10-year rule for eligible designated beneficiaries. Eligible designated beneficiaries include a surviving spouse, individuals with disabilities, beneficiaries who are less than 10 years younger than the original owner, and minor children of the account holder. These individuals will still be allowed to take a life expectancy payout, or spousal continuation in the case of a spouse. It is important to note that the exception for minor children only applies while the child is under the age of majority. Unless disabled, once the child reaches the age of majority, the account will then have to be liquidated by the end of a 10-year window.

Non-natural beneficiaries, such as charities and some trusts, will still be forced to liquidate over a five-year period. In light of this rule change, trusts that are the beneficiaries of current qualified accounts may need to be reviewed to make sure they align with the new rules.

This new distribution rule will impact the beneficiary of any account in which the original owner died after December 31, 2019. Beneficiaries that are currently receiving payments based on life expectancy can continue and will not be affected by the new 10-year rule. Also, if the original account holder died in 2019, the beneficiary would still be eligible for life expectancy distributions provided it is set up by December 31, 2020.

EARLY WITHDRAWAL EXCEPTION CHANGE

BIRTH OR ADOPTION OF A CHILD EXCEPTION

The SECURE Act adds an early withdrawal exception. Individuals will be able to withdraw up to \$5,000 from retirement accounts in the event of the birth or adoption of a child without being assessed the pre-59½, 10% penalty. Depending on the type of account, the distribution may still be taxable. The \$5,000 is aggregate from all retirement accounts, and the withdrawal must occur within 12 months of the birth of the child or the adoption being final. This exception is available for distributions occurring after December 31, 2019, and applies to IRAs as well as employer-sponsored plans.

OTHER CHANGES

STUDENT LOAN PAYMENTS FROM 529 PLANS

The SECURE Act changes the list of qualified expenses from a 529 plan to include payments made for student loans of the beneficiary or a sibling of the beneficiary. The amount is subject to a lifetime limit of \$10,000 per beneficiary. Also, any interest payments made from a distribution from a 529 plan are not eligible for the student loan interest deduction. This change applies retroactively to all distributions made after December 31, 2018.

KIDDIE TAX CHANGES

The Tax Cuts and Jobs Acts changed the “Kiddie Tax” rules to tax unearned income of children over \$2,200 at the Trusts and Estates tax rates. This change was intended to discourage wealthy individuals from shifting investment income to minor children for tax purposes. Unfortunately, this had unintended consequences on children who were receiving military and other benefits due to the loss of a parent. The SECURE Act repealed this change, and a child’s net unearned income over \$2,200 is once again taxed at the parent’s tax rate instead of the Trusts and Estates rates. This change can be applied retroactively to tax years after December 31, 2017.

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