

THE SECURE ACT: New Legislation Brings Major Changes to Retirement Plan Benefits and Administration

Tax & Benefits Alert

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The Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act”), which was passed as part of two spending bills signed by President Trump on December 20, 2019, contains extensive changes affecting employer-sponsored retirement plans and IRAs. The changes are intended to increase participation and accumulations in retirement savings plans, enhance flexibility in distributions, and reduce administrative burdens on plan sponsors. The SECURE Act also eliminated certain excise taxes and fees that were imposed under the Affordable Care Act (“ACA”) enacted in 2010.

Certain provisions of the SECURE Act are effective January 1, 2020, but a special remedial amendment period included in the new law extends the deadline to December 31, 2022, for plan sponsors to make retroactive amendments to plan documents.

We have highlighted below many of the important changes made under the SECURE Act:

Related People:

Jane S. Kimball
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Changes to Qualified Plan Rule Requirements		Effective Date	Plans Impacted
Required Minimum Distributions	Age raised to 72 from 70 ½; there is no change for those already in pay status, and no change for those who turned 70 ½ in 2019 and whose “required beginning date” is April 1, 2020.	Applies to distributions made, and individuals turning age 70 ½, after December 31, 2019.	IRC 401(a), 401(k), 403(b), 457(b) plans, IRAs, defined benefit plans
401(k) Safe Harbor Plans with Qualified Automatic Contribution Feature (QACA)	The cap on the default rate for automatic elective deferrals in a QACA is raised to 15% from 10%.	Plan years beginning after December 31, 2019.	401(k) & 403(b) plans with QACA feature
401(k) Safe Harbor Plans – Notice and Election Timing	Notice requirement eliminated for plans using <i>nonelective contributions</i> to satisfy the safe harbor (but not matching contributions). Plan sponsors can switch to a safe harbor 401(k) plan with <i>nonelective contributions</i> at any time before the 30th day before the close of the plan year. Amendments after the 30th day before the close of the plan year are allowed if (1) the amendment provides a <i>nonelective contribution</i> of at least 4% of compensation (rather than at least 3%) for all eligible employees for that plan year, and (2) the plan is amended no later than the last day for distributing excess contributions for the plan year (that is, by the close of following plan year).	Plan years beginning after December 31, 2019.	401(k) & 403(b) plans
New Eligibility for Long-Term Part-Time Employees	Long-term part-time employees (who are at least age 21, excluding employees covered by collective bargaining agreements) are now eligible to make elective deferrals to a 401(k) plan. The new rule applies to employees who work at least 500 hours in three consecutive 12-month periods. Employees eligible under this rule are not entitled to employer matching or nonelective contributions, and are not counted for coverage, discrimination testing, or top-heavy purposes.	Plan years beginning after December 31, 2020. 12-month periods beginning before January 1, 2021, will not be taken into account.	401(k) plans (not including collectively bargained plans)
Lifetime	Defined contribution plans are required	The changes	ERISA

Changes to Qualified Plan Rule Requirements	Effective Date	Plans Impacted
<p>Income Disclosure on Benefit Statements to provide participants with a benefit statement once within a 12-month period that contains a “lifetime income disclosure” showing the lifetime income stream equivalent to the participant’s account balance based on a qualified joint and survivor annuity and single life annuity. The Department of Labor (“DOL”) is directed to issue a model disclosure form, assumptions, and guidance within one year of the SECURE Act’s enactment (December 20, 2019).</p>	<p>will apply to statements furnished more than 12 months after the DOL issues guidance.</p>	<p>defined contribution plans</p>
<p>10-year Rule for Inherited Retirement Plan Accounts and IRAs</p>	<p>Effective for distributions with respect to employees who die after December 31, 2019.</p>	<p>401(a), 401(k), 403(b), governmental 457(b) plans, IRAs</p>
<p>Fiduciary Safe Harbor for Selecting Lifetime Income Providers</p>	<p>December 20, 2019.</p>	<p>ERISA defined contribution plans</p>

Changes to Qualified Plan Rule Requirements	Effective Date	Plans Impacted
		selection, the insurer is financially capable of satisfying its obligations under the contract, and the cost is reasonable.
Child Birth or Adoption Permitted Withdrawals	Applies to distributions made after December 31, 2019.	401(k), 403(b), governmental 457(b) plans, IRAs
		Withdrawals up to \$5,000 are permitted from plans for expenses related to the birth or adoption of a child for up to one year following the birth or legal adoption. The Section 72(t) 10% early withdrawal penalty does not apply. Distributions may be re-contributed to an applicable eligible retirement plan to which a rollover can be made.
No Plan Loans Using Credit Cards	Applies to loans made after December 20, 2019.	Defined contribution plans that allow loans
		Defined benefit plans are prohibited from making plan loans by using credit cards or other similar arrangements.
Age for In-Service Withdrawals Lowered to 59 ½	Plan years beginning after December 31, 2019.	401(a) defined benefit or money purchase pension plans, governmental 457(b) plans
		Defined benefit plans can offer participants access to their benefits starting at age 59 ½, reduced from age 62.
Frozen/Closed Pension Plans – Discrimination Testing Relief	Effective December 20, 2019. Plan sponsors may elect to apply relief to plan years beginning after December 31, 2013.	Defined benefit plans
		New IRC provisions provide relief to closed and frozen defined benefit plans where benefits are still accrued from nondiscrimination, minimum coverage, and minimum participation testing, subject to certain requirements.
In-Kind Distributions from Terminating 403(b) Plans	Implementing guidance due by June 2020, and will be retroactively effective for taxable years	403(b) plans
		Terminated 403(b) plans with custodial accounts can distribute accounts in kind to be held as an IRA. The distributed accounts will be held by the custodian and will receive 403(b) treatment until the amounts are actually paid to the participant or beneficiary.

Changes to Qualified Plan Rule Requirements	Effective Date	Plans Impacted
	beginning after December 31, 2008.	
Changes to Plan Administration, Fees, and Excise Taxes	Effective Date	Plans Impacted
Rule		
Failure to file Form 5500 penalty increased to \$250 per day (but not to exceed \$150,000). (Note that additional penalties may be imposed by the DOL under ERISA.)		
Increased IRS Penalties	Failure to file Form 8955-SSA (terminated vested participant report) penalty increased to \$10 a day (but not to exceed \$50,000). Effective for returns and notices due after December 31, 2019.	ERISA plans
Extended Date for Adopting Plans	Failure to file a notice of change in status (under Section 6057(b)) (change in plan name, name or address of the plan administrator, the termination of the plan, or the merger or consolidation of the plan with any other plan or its division into two or more plans) penalty increased to \$10 a day (but not to exceed \$10,000). Plans adopted retroactively for a plan year, but before the time prescribed by law for filing the return of the employer for the taxable year (including extensions thereof), may be treated as having been adopted as of the last day of the taxable year.	Applies to plans adopted for tax years 401(a) beginning after December 31, 2019.
Health Insurance Plans – Repealed ACA Taxes	The looming “Cadillac Tax” under the ACA is repealed; it was scheduled to take effect in 2022. It would have imposed a 40% excise tax on the value of employer-sponsored health coverage of more than \$10,000 for self-only coverage and \$27,500 for family coverage based on 2022 indexing. Employers must still continue to report the value of employer-sponsored coverage in Box 12 on W-2, using code DD.	[Repealed before effective date.]

We expect IRS guidance will clarify specific issues that are likely to arise as plan sponsors and employee benefits practitioners navigate the implementation phase of the new plan requirements under the SECURE Act. While the deadline to amend benefit plans for the changes under the SECURE Act is not until the end of 2022, many of the changes are effective January 1, 2020. Therefore, Plan sponsors should begin reviewing their plan documents and their plan's vendor operations to ensure they are in compliance with the new SECURE Act requirements.