The SECURE Act

10 Key Provisions for Retirement Plan Sponsors

The Setting Every Community Up for Retirement Enhancement (SECURE) Act was enacted on December 20, 2019. The Act contains a number of independent provisions which are not necessarily directly related to each other. Below are 10 key provisions likely of most interest to retirement plan sponsors and plan advisors. Unless otherwise noted, these provisions are effective immediately in 2020.

According to the news article **"Actions to Comply With SECURE Act Should Already Be Underway"** (PLANSPONSOR NEWSDASH, January 8, 2020, as reported by Rebecca Moore), the first three provisions listed below are the ones plan sponsors should consider as top priorities. Please consult with your recordkeeper partner(s) for more information on these provisions and how they plan to address implementation in their systems and communicate with participants.

1. **Increased Required Beginning Date for Required Minimum Distributions (RMDs)** — The SECURE Act increased the age triggering required distributions to be taken from qualified employer retirement plans and IRAs from 70 ½ to 72. As an example, an individual who was born on or after July 1, 1949 will turn 70 ½ in 2020. Under the SECURE Act, they won't have to take an RMD until they turn age 72. However, those who turned 70 ½ in 2019 will fall under old rules; they will get their initial RMD April 1, 2020, and will continue taking their required distributions each year.

2. **Penalty Exceptions Allowed on Plan Withdrawals for Birth or Adoption** — The SECURE Act allows an exception to the 10 percent penalty for birth or adoption. New parents can now withdraw up to $5,000 from a retirement account within a year of a child's birth or adoption without the 10 percent penalty that those younger than 59 ½ would normally owe. The distribution, which is still subject to tax, can be repaid to a retirement account.

3. **New Spend-down Limit on Inherited Money from Defined Contribution Plans and IRAs (Non-Spouse Beneficiaries)** — The SECURE Act imposes a 10-year distribution limit for most non-spouse beneficiaries to spend down inherited defined contribution plans and IRAs. Before passage of the Act, withdrawals from inherited accounts could be stretched over the life of beneficiaries to mitigate taxes.

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Other Key Provisions

4. **Post-70½ IRA Contributions** — The prohibition on making deductible contributions to a traditional IRA after age 70½ is repealed.

5. **Safe Harbor 401(k) Plans and Timing of Plan Amendments and Adoptions** —The SECURE Act very generally permits employers to add a safe harbor feature to their existing 401(k) plans during the year; such additions are even permitted very late in the year and after the end of the year if the employer contributes at least 4 percent of employees' pay instead of the regular 3 percent. It also allows employers to adopt a plan for a taxable year as long as the plan is adopted by the due date for the employer's tax return for that year (including extensions).

6. **Long-Term Part-Time Employees** — The SECURE Act requires employers to include long-term part-time workers as participants in defined-contribution plans except in the case of collectively bargained plans. Eligible employees will have completed at least 500 hours of service each year for three consecutive years, and are age 21 or older. However, these participants can be excluded from employer contributions, nondiscrimination and top-heavy requirements. Previously, part-time workers could be excluded if they haven't worked 1,000 hours in a 12-month eligibility period. Note: this provision is effective for plan years beginning after December 31, 2020, but 12-month periods beginning before January 1, 2021 will not be taken into account.

7. **Consolidated Form 5500 Reporting for Similar Plans** — The SECURE Act offers a consolidated Form 5500 for certain defined-contribution plans with a common plan administrator to reduce administrative costs, but also increases penalties for failure to file retirement plan returns, such as Forms 5500, required notifications of registration changes and required withholding notices. Please note that the consolidated form 5500 provision is effective upon issuance of a consolidated Form 5500 no later than January 1, 2022, and will apply to filings for plan years beginning after December 31, 2021.

8. **Startup Credit for Small Employer Plans and New Credit for Small Employer Plans Adopting Automatic Enrollment** — The SECURE Act increases the business tax credit for plan startup costs to make setting up retirement plans more affordable for small businesses. The tax credit will increase from the current cap of $500 to up to $5,000 in certain circumstances. It also encourages small-business owners to adopt automatic enrollment by providing a further $500 tax credit for three years for plans that add auto-enrollment.

9. **Fiduciary Safe Harbor for Selecting Annuity Providers** — The SECURE Act creates a safe harbor that employers can use when choosing an annuity provider to provide annuity distributions under a defined-contribution plan.

10. **Open Multiple Employer Plans / Pooled Employer Plans** — The SECURE Act allows unrelated small employers to band together in "open" 401(k) multiple-employer plans (MEPs; also referred to as pooled employer plans (PEPs)). This reduces the costs and administrative duties that each employer would otherwise bear alone. The Act also eliminates the "one-bad-apple" rule under which a violation by one employer participating in a MEP can trigger severe penalties for the compliant employers in the MEP.
    Note: This provision is effective for plan years beginning after December 31, 2020.

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Resources for More Information

- **Key SECURE Act Provisions and Effective Dates**
  National Association of Plan Advisors
  https://www.napa-net.org/news-info/daily-news/key-secure-act-provisions-and-effective-dates

- **New Year, New World: A Short Guide to the SECURE Act for Retirement Plan Sponsors and Administrators**
  National Law Review
  https://www.natlawreview.com/article/new-year-new-world-short-guide-to-secure-act-retirement-plan-sponsors-and

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