



SECURE ACT: SUMMARY OF CHANGES & PRELIMINARY IMPACT ANALYSIS

The Setting Every Community Up for Retirement Enhancement (SECURE) Act was signed into law on December 20, 2019. The Act contains several changes that will affect employers/plan sponsors as well as individual retirement savers. This preliminary summary is subject to change based upon additional interpretative guidance and “implementing regulations” it directs from Internal Revenue Service and Department of Labor (DOL). Pooled Employer Plans (PEPs) will be addressed in a separate bulletin.

	CURRENT LAW	SECURE ACT CHANGES	NOTES	ACTIONS/NEXT STEPS
Part-Time Eligibility for 401(k) Salary Deferral Contributions	Employees who work less than 1,000 hrs./yr. may be excluded.	Effective for plan years beginning after 12/31/20, employees completing at least 500 hrs./yr. in 3 consecutive yrs. cannot be excluded from the salary deferral portion of a 401(k) plan. Can continue to apply more restrictive requirements for matching and other employer contributions.	N/A for collectively bargained plans. Doesn't change eligibility provisions for non-deferrals. 12-month periods beginning before 1/1/21 not considered for purposes of new eligibility criteria which could create difficulty with administration which could necessitate future VCP filing.	Plans that currently exclude employees that work less than 1,000 hours of service will need to be amended. Plans that do not exclude individuals that work at least 500 hours will not need to be amended. Payroll systems and third-party administrative systems will need to be updated.
Nonelective 401(k) Safe Harbor Notices	Eligible employees must be provided with notices describing safe harbor provisions.	Effective for plan years beginning after 12/31/19, no requirement to provide safe harbor notices for safe harbor non-elective contributions.	Safe harbor notice is still required for safe harbor matching contributions. Potential VCP for failures related to safe harbor match notice.	Advisable to cease distributing safe harbor notices for safe harbor non-elective contributions. Monitor third-party administrators to ensure notices are still provided for matching contributions.
Conversions to Safe Harbor Status	Retroactive elections to convert to nonelective safe harbor status are not allowed.	Effective for plan years beginning after 12/31/19. Non-elective contribution => 4%: adopt by end of next following plan year. Non-elective contribution at least 3% but < 4%: adopt at least 30 days prior to end of plan year.	This change does not allow retroactive elimination of an existing safe-harbor contribution.	Adopt timely amendment to allow the revisions.



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Cap on Default Rate for Automatic Enrollment	Rate for automatic contributions under qualified automatic contribution arrangement (QACA) is 10%.	Effective for plan years beginning after 12/31/19, automatic contributions can be increased up to 15%.	This change allows sponsors to implement auto-escalation limits to that which may approximate (based on Congressional comments) what may be necessary to provide participants with sufficient retirement income.	The plan must adopt an amendment in order to change the QACA rate.
Auto Enrollment Credit	No current provision.	\$500 tax credit per year for first 3 years that automatic enrollment is adopted for small employer plan.	Can be added to existing plan or new plan. Can be used in addition to new plan credit.	Plan must be amended or established with automatic enrollment provisions.
Small Plan Credit for New Plans	Credit available during the first 3 plan years for expenses associated with establishment and operation of a new plan. Credit is capped at \$500 per year.	Credit available during the first 3 plan years for expenses associated with establishment and operation of a new plan. Credit per year is capped at the greater of (A) \$500 or (B) the lesser of (i) \$5,000 or (ii) \$250 times the number of non-highly compensated employees eligible for the plan.	Potentially increases the credits during the 3-year period; however, the \$250 multiplier only applies to non-highly compensated employees. The increased cap will also apply for the remainder of the first 3 years for plans that were adopted in either 2018 or 2019. Credit is still only available for employers with no more than 100 employees.	Adopt a new plan or use new method to calculate cap for plans adopted in 2018 or 2019. Employers should determine whether the credit or an available deduction creates more favorable tax results.



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In-Service Withdrawals after Birth or Adoption	No in-service withdrawals are permitted in connection with childbirth or adoption.	Effective to distributions made after 12/31/2019, in-service withdrawals, up to \$5,000 (per spouse) can be taken within a year after birth or adoption.	Qualifying child is a child under age 18 or disabled. Distributions may be paid back to qualified defined contribution plans, IRAs, 403(b), and 457(b) plans. IRS guidance needed concerning repayment provisions.	Amend plan to include provision. Third-party administrator will need to revise procedures and distribution forms. Procedures need to be revised to recognize repayment of such withdrawals.
In-Service Withdrawals for Defined Benefit, Money Purchase, and Target Benefit Plans	No in-service distributions allowed.	Effective after 12/31/2019, in-service distributions after age 59.5 are allowed.	It is anticipated that additional guidance will be necessary with respect to defined benefit plan benefit adjustments. Guidance will be necessary related to QJSA notices and waivers.	Plan amendment necessary for adoption.
Prohibition on using Credit or Debit Cards to Access Plan Loans	Some plans offer participants the ability to take out loans by using credit or debit cards.	Effective 12/20/2019, no new loans or extensions of existing loans will be allowed through either credit or debit cards from plans.	Immediate elimination may require VCP corrections.	Communicate elimination of availability of loans using credit or debit cards. Amend plan document or written loan program to eliminate availability. Potential VCP if loans allowed after 12/20/2019.



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Retroactive Adoption of Qualified Plan After Plan Year End	No provision.	Effective for tax years beginning after 12/31/2019, qualified plans (excluding ESOPs and salary deferral provisions) can be adopted retroactively after the end of the tax year but before the filing of the plan sponsor’s tax return (including extensions).	Extensions end the earlier of the filing of the tax return or extension. May need guidance from IRS regarding retroactive adoption and new plan credits.	Adopt plan document prior to the end of the plan sponsor’s tax filing period, including extensions.
Lifetime Income Disclosures	No requirement for plans to describe participant balances in terms of amount of monthly income received during retirement.	Effective for statements provided more than 12 months after the DOL issues guidance, defined contribution statements must disclose amount of monthly income estimate the participant could receive if paid as an annuity.	DOL will need to issue (1) interim final rules, (2) the model disclosure, and (3) prescribed assumptions. Safe harbor relief available if plan uses DOL’s actuarial assumptions and “model” language.	Impacts defined contribution plans. Benefit statements will need to be revised. Plan sponsors and third-party administrators will need to make revisions (DOL will need to provide guidance).
Safe Harbor for Selecting Annuity Providers	No provision.	Fiduciaries may obtain representations from providers on ability to satisfy obligations.	Provides for transfer of fiduciary responsibility to annuity provider.	Such decisions are still fiduciary in nature and fees must be reasonable.



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Portability for Lifetime Income Investments	No requirement to allow participants to take distributions from lifetime income investments in the event such options were no longer offered by the plan.	Effective for plan years beginning after 12/31/19, if lifetime income investments are eliminated at the plan level, participants are permitted to take distributions from lifetime income investments in the form of a rollover or direct transfer to an IRA or other qualified plan.	Distributions must be permitted irrespective of any restrictions otherwise applied to in-service distributions.	To the extent the plan provides investment in lifetime income investments, the plan will need to be amended to allow such in-service distributions. Plan sponsors should consider whether the plan should be amended to accept rollovers of lifetime income investments (optional).
Extended Post-Death Distribution Period for Non-Spouse Beneficiaries	Non-spouse beneficiaries are allowed to establish stretch IRAs (or in some cases the qualified plan allows the non-spouse beneficiary to take distributions from the plan) which allow distributions to be measured over initial life expectancy of the beneficiary.	Non-spouse beneficiaries are not allowed to establish a distribution period of longer than 10 years (5 years if the beneficiary is not a designated beneficiary). Spousal beneficiaries are still allowed to take distributions over their life expectancy.	Deaths prior to 1/1/2020 will have prior rule eligibility depending on prior plan document provisions.	Revise distribution notices. Revise plan document, if prior plan document provided extended distribution period for non-spousal beneficiary. Coordination with third-party administrator concerning notices as well as grandfathering.
Changes to RMD Rules	Participants are required to begin RMDs at age 70.5 or termination of employment, if later (for non-5% owners).	Effective 1/1/2020, the beginning date for RMDs will change to age 72, but plans can continue to use age 70.5. Qualified Charitable Distributions are still available at age 70.5	Plans can continue to require distributions at age 70.5, but distributions prior to required beginning date are eligible for rollover and subject to mandatory withholding.	Determine whether to amend age requirements. Participants that turn 70.5 in 2019 must still take their first RMD by 4/1/20; and distribution notices will need to be revised.



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IRA Contribution Age Limit	Age 70.5	Effective 1/1/2020: Eliminate the age limit for making contributions to an IRA.	Allows for continued growth in retirement savings for older individuals.	Timing of such post 70.5 contributions will impact following year RMD amount based on whether the contribution is before or after December 31 on the year the contribution is attributable.
Increased Penalties	Failure to File Form 5500: \$25/per day – Max \$15,000 Failure to provide notification of change: \$1/day – Max \$1,000 Failure to provide withholding notice: \$10/failure – Max \$5,000/year	For filings due after 12/31/2019: Failure to File Form 5500: \$250/per day – Max \$15,000 Failure to provide notification of change: \$10/day – Max \$10,000 Failure to provide withholding notice: \$100/failure – Max \$50,000/year	Since calendar year 2019 plans have filing obligations occurring after 12/31/2019, these increased penalties apply for 2019 filings.	Increased penalties make delinquent filer programs more important for clients to consider.

This document was prepared in consultation with the Retirement Law Group (“RLG”) and is intended solely for educational purposes. It does not constitute legal and/or tax advice. RLG delivers practical, plain English legal solutions to retirement plan sponsors, financial institutions and service providers.

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