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Required and Optional Retirement Plan Changes under the SECURE Act

As part of the bill funding the federal government through next September, the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) became law on December 20, 2019. The SECURE Act makes changes to qualified retirement plan rules to encourage retirement savings and lessen some burdens on plan sponsors. Some of the changes are effective immediately and others have effective dates over the next few years. Generally, employers have two plan years to adopt amendments to update plan documents for required changes. However, for optional changes, plans must be amended before the end of the plan year in which the change is to be effective.

We've summarized the changes in the law below, beginning with those applicable only to 401(k) plans, followed by changes for retirement plans generally, and ending with rules impacting IRAs and retirement plans of targeted groups

Changes Only Applicable to 401(k) Plans:

Part-time Employee Eligibility. The biggest change for 401(k) plans will require employers to allow employees who have not worked 1,000 hours in a year but worked at least 500 hours for three consecutive years to make contributions to a 401(k) plan. Currently, employees who don't work 1,000 hours per year can be excluded from participation. The new rule will apply beginning with the 2021 plan year and only counting service beginning with that year, so employees will not be required to be offered the 401(k) plan until 2024. Employer contributions are not required for these employees. Many nondiscrimination testing rules exclude certain employees who have not worked 1,000 hours during the year, and the 500-hour employees can still be excluded for testing if they are currently excludable.

No Plan Loans Using Credit Cards. Effective immediately, 401(k) plan loans to participants cannot be facilitated through a credit card or similar arrangement. This method of making loans wasn't

common, and this is a change your third-party administrator should implement if applicable.

No Early Distribution Penalty for Plan Withdrawals Upon Birth or Adoption. Plans can now allow a participant to elect an in-service distribution of up to \$5,000 within one year of birth or adoption. These distributions are exempt from the 10% distribution penalty that otherwise generally applies to distributions before age 59½, and participants can repay the distribution. There is no deadline for repayment, and it is not clear if plans are required to allow repayment. Hopefully IRS guidance will be issued quickly on these points.

Increased Automatic Enrollment Percentage Limit. If your plan has automatic enrollment of employees for elective contributions and the automatic enrollment is part of a safe-harbor design, it is now permissible to increase employee elective contributions annually until they reach 15% of pay, increased from the prior limit of 10% of pay. You can make this change for plan years beginning after December 31, 2019. A plan amendment is required. The safe harbor 401(k) plan allows highly compensated employees to contribute up to the maximum limit (\$19,500 for 2020) each year without nondiscrimination testing. The automatic enrollment type of safe harbor allows slightly lower employer contributions and results in significant increases in employee contributions and retirement savings.

Later amendment for a safe harbor design. If your 401(k) plan has failed nondiscrimination testing and had to refund salary deferrals to highly compensated employees, a safe harbor design would eliminate the testing and refunds, so your highly compensated employees can contribute up to the maximum limit each year. Safe harbor status must generally be adopted by plan amendment before the plan year begins, but the new law allows employers to adopt an amendment to become a non-elective contribution type of safe harbor plan during, or even after, the plan year. An amendment adopted by December 1 of a calendar plan year requires a 3% employer contribution and an amendment adopted by the end of the following year requires a 4% employer contribution.

Notice Not Required for Non-Elective Contribution Safe Harbor Plan. Safe harbor plans generally must provide a notice to participants 30 days before each plan year begins summarizing the safe harbor contributions and other plan terms. This notice is no longer required for plans relying on the non-elective contribution safe harbor for testing elective deferrals, effective for plan years beginning on or after December 31, 2020. This makes adopting a new non-elective contribution type safe-harbor plan as described above even easier.

Changes Applicable to All Retirement Plans:

RMDs Now Triggered at 72. Required minimum distributions (RMDs) for individuals who reach age 70 ½ after December 31, 2019 will not be required until after age 72. The rules for distributions to non-spouse beneficiaries after death have also changed to generally require distribution within ten years, no longer allowing distributions over life expectancy.

Later Plan Adoption. New plans can now be adopted as late as the due date of the employer's tax return for taxable years after 2019. This does not apply to 401(k) plans.

Form 5500 Penalties Now Ten Times Higher. Penalties for a plan's failure to file certain forms and notices have increased significantly, including penalties for failure to file a Form 5500, a deferred vested benefit statement, or a Form 8822 notice of changes in a the business address or responsible party associated with an EIN for a plan, its trust or the plan administrator. Penalties for failure to provide a withholding notice have also increased. The Form 5500 penalties have increased from \$25 to \$250 per day. All retirement plans are required to file a Form 5500 annually, with a very limited exception for a plan covering only a self-employed individual. A delinquent filer program is available to make-up delinquent filings at a minimal cost, but only if the filings are made before notice of an IRS audit.

Required Lifetime Income Illustration. Plans will be required to include a lifetime income illustration showing the monthly income the participant's account could provide at retirement. This does not

require plans to allow distributions over a participant's lifetime. The Department of Labor is required to issue a model lifetime income illustration and disclosure rules and sponsors will then have at least 12 months to begin to issue the annual lifetime income illustration.

Fiduciary Safe Harbor for Selecting Annuities. In an effort to encourage plan sponsors to provide lifetime income options, there is a new fiduciary safe-harbor setting out steps a fiduciary can take to evaluate and select an annuity investment option for a plan, and the new rules also permits annuity investments to be transferred between plans if the investment is no longer to be offered in a plan.

IRAs and Other New Rules that Only Apply to Certain Plans:

- Certain defined benefit plans that are closed to new participants now have permanent relief from minimum participation and certain nondiscrimination testing rules and the plan aggregation rules for testing have been expanded.
- The age 70½ age limit for IRA contributions is removed, and individuals who are still working and who are eligible to make IRA contributions can continue to make IRA contributions regardless of age.
- Pension plans and government 457(b) plans can now allow in-service distributions at age 59½, decreased from age 62.
- Tax credits for small employers who start a retirement plan are increased.
- New rules will facilitate multiple employer plans (MEPs) that could be offered by associations or retirement plan vendors beginning in 2021. These types of plans, also called open MEPs or pooled plans, can allow small employers to offer plans at lower administrative costs.
- Consolidated Form 5500 returns will be permitted by plans that have similar providers and investment options beginning after 2021.
- Qualified disaster distributions made from plans related to certain prior disasters are provided relief from penalties.

- Church-controlled organization plans have new rules to clarify which individuals are eligible to participate.
- Certain home health care workers who receive “difficulty of care” payments that are not considered taxable income will now be able to make plan or IRA contributions from the non-taxable payments.
- Community newspaper plans are eligible for pension funding relief if benefit accruals ceased by December 31, 2017.

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