SECURE Act Considerations for Retirement Plan Sponsors

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On December 20, 2019, Congress enacted the SECURE Act as part of the Further Consolidated Appropriations Act of 2020 (together, the "Act"). The Act includes both required and discretionary changes for employer-sponsored qualified retirement plans, some of which are effective for the 2020 plan year. Below is an overview of these changes with a reference to each date on or prior to the plan year for which the changes become effective.

Note that this Advisory does not address changes from the Act that do not affect employer-sponsored qualified retirement plans.

Changes Regarding Contributions and Withdrawals

December 20, 2019

- **Credit Card Plan Loans**. Qualified retirement plans are prohibited from making plan loans through credit cards or similar arrangements.

December 31, 2019

- **Default Automatic Contribution Rate**. The maximum safe harbor default automatic contribution rate is increased from 10% to 15% (but can't be more than 10% for the first year of participation).
- **Safe Harbor 401(k) Plan – Election**. A 401(k) plan may become a nonelective contribution safe harbor 401(k) plan after the beginning of the plan year if either (i) it is amended by the 30th day before the end of the plan year, or (ii) it provides a nonelective contribution of at least 4% for the plan year and is amended before the last day for distributing excess contributions for the plan year.
- **Safe Harbor 401(k) Plan – Notice Requirement.** The safe harbor notice requirements no longer apply to nonelective contribution safe harbor 401(k) plans, but continue to apply to matching contribution safe harbor 401(k) plans.
- **Small Employer – Retirement Plan Start-Up Credit**. The maximum available tax credit for small employers starting a new retirement plan is increased from $500 to $5,000 available during a 3-year credit period.
- **Small Employer – Automatic Enrollment Credit**. Small employers adding an automatic enrollment feature to a new or existing retirement plan may qualify for a new $500 tax credit available during a 3-year credit period.

- **Lifetime Income Investment – Portability**. With respect to 401(a) defined contribution plans, 403(b) plans and 457(b) plans, if a lifetime income investment is no longer authorized to be held as an investment option under the plan, the plan may permit participants to (i) directly roll over the lifetime income investment to another employer-sponsored plan or IRA, or (ii) take a distribution of the lifetime income investment in the form of a qualified plan distribution annuity contract.

- **Penalty-Free Withdrawals in Case of Birth or Adoption**. Qualified retirement plans, other than defined benefit plans, may allow for penalty-free withdrawals of up to $5,000 following the birth or legal adoption of a child.

- **Maximum Age for Required Minimum Distribution**. The age by which required minimum distributions must start is increased from 70 ½ to 72. This change will need to be reflected in the special rollover notice issued to participants prior to an eligible rollover distribution.

- **Minimum Age for In-Service Distribution**. The earliest age for defined benefit and 457(b) plans to allow participants to take distributions while still working is reduced from 62 to 59 ½.

- **Home Healthcare Worker Compensation**. For purposes of the 415 compensation limits applicable to defined contribution plans, tax exempt difficulty of care payments must be treated as part of a participant's compensation when calculating contribution limits.

December 31, 2020

- **Pooled Employer Plan**. Unrelated employers, sharing no common interest with each other, may establish a new type of defined contribution plan as a single employer.

- **Long-Term, Part-Time Employees**. Except for collectively bargained plans, 401(k) plans must allow for participation by employees working more than 500 hours per year during three consecutive 12-month periods.

Pending Guidance

- **Special 403(b) Plan Change**. The Treasury is required to issue guidance providing that if an employer terminates a 403(b) custodial account, the custodial account may be distributed in-kind and retain its tax-deferred status until paid – this new guidance will be retroactively effective for taxable years beginning after December 31, 2008.

Changes to Increase Revenue

December 31, 2019

- **Required Distributions After Death**. With respect to 401(a) defined contribution plans and IRAs, upon a participant's death, the participant's account must be distributed to his or her designated beneficiary by the end of the 10th year following the year of the participant's death, unless the beneficiary is an "eligible designated beneficiary," in which case, distributions can be made over the life expectancy of the beneficiary. For these purposes, an eligible designated beneficiary is a beneficiary who is either (i) the participants' surviving spouse, (ii) the participant's minor child (until the age of majority), (iii) a disabled individual, (iv) a chronically ill individual, or (v) an individual not more than 10 years younger than the participant.

- **Failure to File Form 5500**. The penalty for failing to file a Form 5500 is increased from $25 per day to $250 per day, with the maximum penalty increased from $15,000 to $150,000.

- **Failure to Report Change in Status**. The penalty for failing to report a change in status (i.e., a change in the name of the plan, name or address of the plan administrator, or a termination, merger or consolidation of the plan) is increased from $1 per day to $10 per day, with the maximum penalty increased from $1,000 to $10,000.

- **Failure to File Form 8955-SSA**. The penalty for failing to file Form 8955-SSA, which is used to report information about separated participants with deferred vested benefits under a qualified retirement plan, is increased from $1 per participant, per day to $10 per participant, per day, with the maximum penalty increased from $5,000 to $50,000.

- **Failure to Pay Excise Tax**. The penalty for failing to pay a prohibited transaction excise tax, which is reported on Form 5330, is increased from the lesser of $330 or 100% of the tax due, to the lesser of $435 or 100% of the tax due.

- **Failure to Provide Withholding Notice**. The penalty for failing to provide a participant with notice of their right to elect no withholding from plan payments is increased from $10 per failure to $100 per failure, with the maximum penalty increased from $5,000 to $50,000.

Changes to Provide Disaster Relief

December 20, 2019

- **Special Disaster Rules**. In addition to other disaster-related relief, employers may allow qualified retirement plan participants affected by nationally declared disasters occurring between January 1, 2018 and February 18, 2020 to take a penalty-free withdrawal or loan for up to $100,000. In order to provide for this additional disaster relief, plan amendments must be adopted by the end of the 2020 plan year.

Amendment Deadline

Except as noted above, employers have at least until the end of the 2022 plan year to adopt plan amendments, but certain required changes must be put into operational effect sooner. As such, employers that sponsor qualified retirement plans should contact their third party service provider(s) to confirm that required operational changes are being implemented as they become effective.

If you have any questions about the SECURE Act, please contact a member of our Employee Benefits Group.