

Voya Alert!

December 24, 2019

Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 Modifies Retirement Plan Provisions

On December 20, 2019, President Trump signed into law the Further Consolidated Appropriations Act, 2020 (H.R. 1865) which included the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 (the "Act"). The Act includes a number of retirement savings and employee benefit changes. The summary below explains retirement plan changes made by the Act.

Expansion of Multiple Employer Plan Design

Unrelated employers will be allowed to participate in an "open" multiple employer plan (MEP). The open MEP would be considered a "pooled employer plan" and is treated as a single plan under ERISA if the plan uses a "pooled plan provider" ("PPP") that is responsible for performing all administrative duties necessary to ensure that the plan complies with ERISA and the Internal Revenue Code. A PPP would be a named fiduciary, plan administrator, and subject to registration, audit, examination, and investigation by Treasury and DOL. Note that each adopting employer retains fiduciary responsibility for certain duties; for example the selection and monitoring of the PPP and any other fiduciary, and the investment and management of plan assets attributable to such employer (unless these duties are delegated to another fiduciary by the PPP).

The Act provides relief for employers participating under a MEP where one participating employer has an operational defect by eliminating the "one bad apple" rule. To receive relief under this provision, the MEP maintained by participating employers has to have either (1) a "common interest other than having adopted the plan" or (2) use a PPP. The part of the MEP with the defect would be spun off from the MEP to a separate plan or IRA. Additionally, the employer responsible for the "bad apple event" must be responsible for any liabilities with respect to its plan and plan participants.

Additionally, the Act contains special rules applicable to 5500 reporting for the MEP.

Effective Date: Plan years beginning after December 31, 2020.

Applicable Plans: Defined contribution 401(a)/401(k) plans and traditional IRAs.

Modifications to the Required Minimum Distribution (RMD) Rules

1. The age triggering the required beginning date to take RMDs for plans and traditional IRAs, which was formerly set at age 70 ½ is increased to age 72.

Effective Date: Applicable to distributions required to be made after December 31, 2019, with respect to individuals who attain age 70½ after such date.

Applicable Plans: 401(a), 401(k), 403(b), and governmental 457(b) plans and traditional IRAs.

2. New RMD rules for payments to **beneficiaries** from defined contribution plans and IRAs,

Payments to most non-spousal beneficiaries must be completed by the 10th calendar year following the year of the participant/IRA owner's death regardless of whether RMDs begin before or after death. This effectively eliminates the "stretch RMD" option for impacted non-spouse beneficiaries (i.e. unless an exception noted below applies).

The ten-year rule does not apply to any portion payable to "eligible designated beneficiaries" if such portion will be distributed over the beneficiary's life or a period not exceeding their life expectancy and such distributions begin within one year of the death.

Eligible designated beneficiaries are defined as:

- Surviving spouse of the employee (or IRA owner),*
- Disabled or chronically ill individual,
- Individual who is not more than 10 years younger than the employee (or IRA owner), or
- Minor child of the employee (or IRA owner). **

* If the eligible designated beneficiary is the surviving spouse, then such distributions would not be required to begin earlier than the date on which the participant/IRA owner would have attained age 72. Surviving spouses also have the option of converting the IRA to their own.

** In the case of a child who has not attained the age of majority, the ten-year rule would apply as of the date the child attains the age of majority.

Effective Date: These changes apply generally with respect to deaths after 2019. There are delayed effective dates for collectively bargained plans and for governmental plans and for making plan amendments.

Applicable Plans: 401(a), 401(k), 403(b), and 457(b) plans and traditional IRAs and Roth IRAs.

Permit Plan Withdrawals for Birth or Adoption

A participant may take a withdrawal of up to \$5,000 per birth or adoption from certain employer-sponsored plans or a traditional IRA for the birth or adoption of the participant's child for the 1-year period following the birth or adoption. The adopted child must be less than 18 years old, or physically or mentally incapable of self-support. Additionally, qualified adoption distributions would not include the adoption of a child of the taxpayer's spouse. The withdrawal would **not** be subject to the IRS 10% premature distribution penalty tax, federal 20% mandatory withholding, or the Special Tax Notice, and direct roll over rules applicable to retirement plans. The withdrawal could be repaid to the plan or IRA, without regard to the 60-day limit applicable to rollovers.

Effective Date: Applicable for distributions made after December 31, 2019.

Applicable Plans: 401(a), 401(k), 403(b), and governmental 457(b) plans and traditional IRAs.

Modifications to the Age for In-Service Withdrawals from Governmental 457(b) and Pension Plans

The age for an in-service withdrawal under governmental 457(b) plans would decrease from age 70 ½ to age 59 ½. In addition, pension plans (both defined benefit and money purchase pension plans) can permit distributions at age 59 ½.

Effective Date: Applicable to plan years beginning after December 31, 2019.

Applicable Plans: Governmental 457(b) plans and pension plans (including defined benefit and money purchase pension plans).

Guidance for 403(b) Plan Terminations Involving 403(b)(7) Custodial Accounts

The Act directs Treasury to issue guidance, not later than 6 months after the date of enactment, that would permit 403(b)(7) custodial accounts to be distributed to the impacted participant upon plan termination as an individual custodial account, similar to the current treatment for a 403(b)(1) paid-up annuity. The individual custodial account shall be maintained on a tax-deferred basis as a 403(b) custodial account until paid out, subject to the 403(b) rules in effect at the time that the individual custodial account is distributed.

Effective Date: Per Treasury guidance, but retroactively effective for taxable years beginning after December 31, 2008.

Applicable Plan: 403(b) plans.

Modifications to Automatic Enrollment & Escalation

1. **Increase to the Automatic Escalation Percentage Limit on Qualified Automatic Contribution Arrangements (“QACA”)**
If a 401(k) or ERISA 403(b) plan is using a QACA to satisfy nondiscrimination testing, the maximum percent of compensation under the **automatic escalation** feature is increased from 10% to 15% of compensation for years after the first plan year in which the employee is automatically enrolled. In the first plan year, the default contribution rate still cannot exceed 10% of compensation.

Effective Date: Applicable to plan years beginning after December 31, 2019.

Applicable Plan: 401(k) and ERISA 403(b) plans.

2. **Encourage Small Employer Plans to Adopt Automatic Enrollment**
An employer with generally up to 100 employees would be eligible for a credit of \$500/year for up to 3 years beginning with the first taxable year for which the employer includes automatic enrollment in a qualified employer plan (even if the feature was added after the plan was adopted).

Effective Date: Applicable to taxable years beginning after December 31, 2019.

Applicable Plan: 401(k) plans and SIMPLE IRA plans.

Increased Credit for Small Employer Pension Plan Startup Costs

The start-up credit for employers with generally up to 100 employees is increased from \$500 to the greater of:

1. \$500, or
2. The lesser of \$250 for each eligible non-highly compensated employee or \$5,000.

Effective Date: Applicable to taxable years beginning after December 31, 2019.

Applicable Plans: 401(a), 401(k), 403(b), SEP and SIMPLE IRAs.

Safe Harbor 401(k) Requirements Modified

The Act eliminates the requirement that plan sponsors provide an annual notice if the plan is operating under a safe harbor by making non-elective contributions to meet nondiscrimination requirements. However, the initial notice must still be provided to employees within a reasonable time period before the employee becomes eligible.

A 401(k) plan may be amended to be a non-elective contribution safe harbor plan (1) at any time prior to 30 days before the close of the plan year (without being required to satisfy the additional conditions as currently provided for under regulation) or (2) on or after the 30th day before the end of the year, as long as the amendment is made by the close of the following plan year, and the non-elective contribution is at least 4%.

Effective Date: Applicable to plan years beginning after December 31, 2019.

Applicable Plan: 401(k) plans.

Modification of Eligibility Rules for Long Term Part-Time Employees

Except in the case of collectively bargained plans, a 401(k) plan must maintain a dual eligibility requirement -- an employee must complete either (1) one-year of service (under the 1,000-hour rule) or (2) 3 consecutive years where the employee completes at least 500 hours of service.

If an employee becomes eligible solely under the 3 consecutive years of service rule, the employer may elect:

- To exclude such employees from nondiscrimination and coverage testing
- To exclude such employees from the application of the top-heavy rules
- To not make matching or non-elective contributions on behalf of such employees
- To impose a requirement that the employee attain age 21 before participating in the plan

In the case of employees who are eligible solely by reason of the 3 consecutive years of service rule, each 12-month period for which the employee has at least 500 hours of service shall be treated as a year of service for vesting purposes and shall not be treated as a 1-year break in service. 12 month periods beginning before January 1, 2021 will not be taken into account for eligibility purposes.

Effective Date: Generally applicable for plan years beginning after December 31, 2020.

Applicable Plan: 401(k) plans

Portability of Lifetime Distribution Options

Participants in defined contribution plans, section 403(b) plans, or governmental section 457(b) plans with a lifetime income investment option may, without regard to the Internal Revenue Code's withdrawal restrictions, make a direct trustee-to-trustee transfer of that investment in the form of a qualified plan distribution annuity to another employer-sponsored retirement plan or IRA, where the transferring plan no longer permits a lifetime income investment.

Effective Date: Applicable to plan years beginning after December 31, 2019.

Applicable Plan: Defined contribution 401(a), 401(k), 403(b) and governmental 457(b) plans.

Plan Administration Modifications

1. An employer could adopt a plan for a taxable year by the due date of the employer's tax return for that year (including applicable extensions).

Effective Date: Applicable to plans adopted for taxable years beginning after December 31, 2019.

Applicable Plans: 401(a) and 401(k) plans of for-profit employers.

2. A group of similar individual account plans could file a single consolidated IRS Form 5500, provided that the plans all have the same trustee or named fiduciary, operated under the same plan year, and have the same investments/investment options.

Effective Date: Applicable to Form 5500 for plan years beginning after December 31, 2021.

Applicable Plans: ERISA defined contribution 401(a), 401(k), 403(b) plans.

3. Increased Form 5500 and other filing penalties:
 - a. Form 5500. The penalty for failure to file the Form 5500 is increased from \$25 to \$250/day, subject to a maximum of \$150,000 (increased from \$15,000);
 - b. Annual Registration Statement. Failure to file a registration statement identifying separated, deferred vested participants would be increased from \$1 to \$10/participant, subject to a maximum of \$50,000 (increased from \$5,000);
 - c. Notification of Change of Status. Failure to file a required notification of certain changes in a plan's registration information would be increased from \$1 to \$10/day, subject to maximum of \$10,000 (increased from \$1,000);
 - d. Withholding Notices. Failure to provide a required withholding notice would increase from \$10 to \$100/failure, subject to a maximum of \$50,000 (increased from \$5,000).

Effective Date: Applicable to returns, statements, and notices required to be provided after December 31, 2019.

Applicable Plans: ERISA defined contribution 401(a), 401(k), 403(b) plans.

4. Defined contribution plan benefit statements must include a lifetime income disclosure at least once during any 12-month period.

Effective Date: The Department of Labor is charged with issuing guidance within one year from the date of enactment of the Act.

Applicable Plans: ERISA defined contribution 401(a), 401(k), 403(b) plans.

Modifications to Contribution Rules for Traditional IRAs

1. *Permitting Traditional IRAs to Receive Non-Rollover Contributions*

The Internal Revenue Code is amended to remove the current prohibition for individuals who are at least age 70 ½ from making non-rollover contributions to a traditional IRA. Such individuals would still need to meet all other criteria for making an IRA contribution, including having earned compensation.

2. *Broadening the Definition of Compensation*

Amounts includible in an individual's gross income that are paid to that individual for the pursuit of graduate or postdoctoral study would be considered compensation for purposes of determining eligibility to contribute to an IRA.

Effective Date: Applicable to contributions made for taxable years beginning after December 31, 2019.

Applicable Plans: Traditional and Roth IRAs.

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