

# **SUMMARY OF THE SETTING EVERY COMMUNITY UP FOR RETIREMENT ENHANCEMENT ACT OF 2019 (THE SECURE ACT)**

## **TITLE I: Expanding and Preserving Retirement Savings**

### **Sections 101. Increase Access for Workers in Small Companies to Retirement Plans by Authorizing Multiple Employer Defined Contribution Plans**

Multiple employer plans (MEPs) provide an opportunity for small employers to band together to obtain more favorable pension investment results and more efficient and less expensive management services. The legislation makes MEPs more attractive by eliminating outdated barriers to the use of MEPs and improving the quality of MEP service providers.

### **Section 102. Expand Retirement Savings by Increasing the Auto Enrollment Safe Harbor Cap**

The legislation increases the cap from 10 to 15 percent of employee pay that required automatic escalation of employee deferrals go no higher than under an automatic enrollment safe harbor plan.

### **Section 103. Simplification of Safe Harbor 401(k) Rules**

The legislation changes the nonelective contribution 401(k) safe harbor to provide greater flexibility, improve employee protection and facilitate plan adoption. The legislation eliminates the safe harbor notice requirement, but maintains the requirement to allow employees to make or change an election at least once per year. The bill also permits amendments to nonelective status at any time before the 30th day before the close of the plan year. Amendments after that time would be allowed if the amendment provides (1) a nonelective contribution of at least four percent of compensation (rather than at least three percent) for all eligible employees for that plan year, and (2) the plan is amended no later than the last day for distributing excess contributions for the plan year, that is, by the close of following plan year.

### **Sec. 104. Increase Credit Limitation for Small Employer Pension Plan Start-Up Costs**

Increasing the credit for plan start-up costs will make it more affordable for small businesses to set up retirement plans. The legislation increases the credit by changing the calculation of the flat dollar amount limit on the credit to the greater of (1) \$500 or (2) the lesser of (a) \$250 multiplied by the number of nonhighly compensated employees of the eligible employer who are eligible to participate in the plan or (b) \$5,000. The credit applies for up to three years.

### **Section 105. Small Employer Automatic Enrollment Credit**

Automatic enrollment is shown to increase employee participation and higher retirement savings. The legislation creates a new tax credit of up to \$500 per year to employers to defray startup costs for new section 401(k) plans and SIMPLE IRA plans that include automatic enrollment. The credit is in addition to the plan start-up credit allowed under present law and would be available for three years. The credit would also be available to employers that convert an existing plan to an automatic enrollment design.

### **Section 106. Treat Certain Taxable Non-Tuition Fellowship and Stipend Payments as Compensation for IRA Purposes**

Stipends and non-tuition fellowship payments received by graduate and postdoctoral students are not treated as compensation and cannot be used as the basis for IRA contributions. The legislation removes this obstacle to retirement savings by taking such amounts that are includible in income into account for IRA contribution purposes. The change will enable these students to begin saving for retirement and accumulate tax-favored retirement savings.

### **Section 107. Repeal of Maximum Age for Traditional IRA Contributions**

The legislation repeals the prohibition on contributions to a traditional IRA by an individual who has attained age 70½. As Americans live longer, an increasing number continue employment beyond traditional retirement age.

### **Section 108. Qualified Employer Plans Prohibited from Making Loans through Credit Cards and Other Similar Arrangements**

The legislation prohibits the distribution of plan loans through credit cards or similar arrangements. The change will ensure that plan loans are not used for routine or small purchases, thereby preserving retirement savings.

### **Section 109. Portability of Lifetime Income Options**

The legislation permits qualified defined contribution plans, section 403(b) plans, or governmental section 457(b) plans to make a direct trustee-to-trustee transfer to another employer-sponsored retirement plan or IRA of lifetime income investments or distributions of a lifetime income investment in the form of a qualified plan distribution annuity, if a lifetime income investment is no longer authorized to be held as an investment option under the plan. The change will permit participants to preserve their lifetime income investments and avoid surrender charges and fees.

### **Section 110. Treatment of Custodial Accounts on Termination of Section 403(b) Plans**

Under the provision, not later than six months after the date of enactment, Treasury will issue guidance under which if an employer terminates a 403(b) custodial account, the distribution needed to effectuate the plan termination may be the distribution of an individual custodial account in kind to a participant or beneficiary. The individual custodial account will 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. The Treasury guidance shall be retroactively effective for taxable years beginning after December 31, 2008.

### **Section 111. Clarification of Retirement Income Account Rules Relating to Church-Controlled Organizations**

The legislation clarifies individuals that may be covered by plans maintained by church controlled organizations. Covered individuals include duly ordained, commissioned, or licensed ministers,

regardless of the source of compensation; employees of a tax-exempt organization, controlled by or associated with a church or a convention or association of churches; and certain employees after separation from service with a church, a convention or association of churches, or an organization described above.

### **Section 112. Allowing Long-term Part-time Workers to Participate in 401(k) Plans**

Under current law, employers generally may exclude part-time employees (employees who work less than 1,000 hours per year) when providing a defined contribution plan to their employees. As women are more likely than men to work part-time, these rules can be quite harmful for women in preparing for retirement. Except in the case of collectively bargained plans, the bill will require employers maintaining a 401(k) plan to have a dual eligibility requirement under which an employee must complete either a one year of service requirement (with the 1,000-hour rule) or three consecutive years of service where the employee completes at least 500 hours of service. In the case of employees who are eligible solely by reason of the latter new rule, the employer may elect to exclude such employees from testing under the nondiscrimination and coverage rules, and from the application of the top-heavy rules.

### **Section 113. Penalty-free Withdrawals from Retirement Plans for Individuals in Case of Birth or Adoption**

The legislation provides for penalty-free withdrawals from retirement plans for any “qualified birth or adoption distributions.”

### **Section 114. Increase in Age for Required Beginning Date for Mandatory Distributions**

Under current law, participants are generally required to begin taking distributions from their retirement plan at age 70 ½. The policy behind this rule is to ensure that individuals spend their retirement savings during their lifetime and not use their retirement plans for estate planning purposes to transfer wealth to beneficiaries. However, the age 70 ½ was first applied in the retirement plan context in the early 1960s and has never been adjusted to take into account increases in life expectancy. The bill increases the required minimum distribution age from 70 ½ to 72.

### **Section 115. Community Newspapers Pension Funding Relief**

Community newspapers are generally family-owned, non-publicly traded, independent newspapers. This provision provides pension funding relief for community newspaper plan sponsors by increasing the interest rate to calculate those funding obligations to 8%. Additionally, this bill provides for a longer amortization period of 30 years from 7 years. These two changes would reduce the annual amount struggling community newspaper employers would be required to contribute to their pension plan.

### **Section 116. Treating Excluded Difficulty of Care Payments as Compensation for Determining Retirement Contribution Limitations**

Many home healthcare workers do not have a taxable income because their only compensation comes from “difficulty of care” payments exempt from taxation under Code section 131. Because

such workers do not have taxable income, they cannot save for retirement in a defined contribution plan or IRA. This provision would allow home healthcare workers to contribute to a plan or IRA by amending Code sections 415(c) and 408(o) to provide that tax exempt difficulty of care payments are treated as compensation for purposes of calculating the contribution limits to defined contribution plans and IRAs.

## **TITLE II: Administrative Improvements**

### **Section 201. Plans Adopted by Filing Due Date for Year May Be Treated as in Effect as of Close of Year**

The legislation permits businesses to treat qualified retirement plans adopted before the due date (including extensions) of the tax return for the taxable year to treat the plan as having been adopted as of the last day of the taxable year. The additional time to establish a plan provides flexibility for employers that are considering adopting a plan and the opportunity for employees to receive contributions for that earlier year and begin to accumulate retirement savings.

### **Section 202. Combined Annual Reports for Group of Plans**

The legislation directs the IRS and DOL to effectuate the filing of a consolidated Form 5500 for similar plans. Plans eligible for consolidated filing must be defined contribution plans, with the same trustee, the same named fiduciary (or named fiduciaries) under ERISA, and the same administrator, using the same plan year, and providing the same investments or investment options to participants and beneficiaries. The change will reduce aggregate administrative costs, making it easier for small employers to sponsor a retirement plan and thus improving retirement savings.

### **Section 203. Disclosure Regarding Lifetime Income**

The legislation requires benefit statements provided to defined contribution plan participants to include a lifetime income disclosure at least once during any 12-month period. The disclosure would illustrate the monthly payments the participant would receive if the total account balance were used to provide lifetime income streams, including a qualified joint and survivor annuity for the participant and the participant's surviving spouse and a single life annuity. The Secretary of Labor is directed to develop a model disclosure. Disclosure in terms of monthly payments will provide useful information to plan participants in correlating the funds in their defined contribution plan to lifetime income. Plan fiduciaries, plan sponsors, or other persons will have no liability under ERISA solely by reason of the provision of lifetime income stream equivalents that are derived in accordance with the assumptions and guidance under the provision and that include the explanations contained in the model disclosure.

### **Section 204. Fiduciary Safe Harbor for Selection of Lifetime Income Provider**

The legislation provides certainty for plan sponsors in the selection of lifetime income providers, a fiduciary act under ERISA. Under the bill, fiduciaries are afforded an optional safe harbor to satisfy the prudence requirement with respect to the selection of insurers for a guaranteed retirement income contract and are protected from liability for any losses that may result to the participant or beneficiary due to an insurer's inability in the future to satisfy its financial obligations under the terms of the contract. Removing ambiguity about the applicable fiduciary standard eliminates a roadblock to offering lifetime income benefit options under a defined contribution plan.

## **Section 205. Modification of Nondiscrimination Rules to Protect Older, Longer Service Participation**

The legislation modifies the nondiscrimination rules with respect to closed plans to permit existing participants to continue to accrue benefits. The modification will protect the benefits for older, longer-service employees as they near retirement.

## **Section 206. Modification of PBGC Premiums for CSEC Plans**

In 2014, different funding rules were adopted for three types of pension plans: single-employer, multiemployer and CSEC plans. The legislation establishes individualized rules for calculating PBGC premiums. For CSEC plans, the legislation specifies flat-rate premiums of \$19 per participant, and variable rate premiums of \$9 for each \$1,000 of unfunded vested benefits.

### **TITLE III: Other Benefits**

## **Section 301. Benefits for Volunteer Firefighters and Emergency Medical Responders**

The legislation reinstates for one year the exclusions for qualified State or local tax benefits and qualified reimbursement payments provided to members of qualified volunteer emergency response organizations and increases the exclusion for qualified reimbursement payments to \$50 for each month during which a volunteer performs services.

## **Section 302. Expansion of Section 529 Plans**

The legislation expands 529 education savings accounts to cover costs associated with registered apprenticeships; homeschooling; up to \$10,000 of qualified student loan repayments (including those for siblings); and private elementary, secondary, or religious schools.

### **TITLE IV: Revenue Provisions**

## **Section 401. Modifications to Required Minimum Distribution Rules**

The legislation modifies the required minimum distribution rules with respect to defined contribution plan and IRA balances upon the death of the account owner. Under the legislation, distributions to individuals other than the surviving spouse of the employee (or IRA owner), disabled or chronically ill individuals, individuals who are not more than 10 years younger than the employee (or IRA owner), or child of the employee (or IRA owner) who has not reached the age of majority are generally required to be distributed by the end of the tenth calendar year following the year of the employee or IRA owner's death.

## **Section 402. Increase in Penalty for Failure to File**

The legislation increases the failure to file penalty to the lesser of \$400 or 100 percent of the amount of the tax due. Increasing the penalties will encourage the filing of timely and accurate returns which, in turn, will improve overall tax administration.

### **Section 403. Increased Penalties for Failure to File Retirement Plan Returns**

The legislation modifies the failure to file penalties for retirement plan returns. The Form 5500 penalty would be modified to \$105 per day, not to exceed \$50,000. Failure to file a registration statement would incur a penalty of \$2 per participant per day, not to exceed \$10,000. Failure to file a required notification of change would result in a penalty of \$2 per day, not to exceed \$5,000 for any failure. Failure to provide a required withholding notice results in a penalty of \$100 for each failure, not to exceed \$50,000 for all failures during any calendar year. Increasing the penalties will encourage the filing of timely and accurate information returns and statements and the provision of required notices, which, in turn, will improve overall tax administration.

### **Section 404. Increase Information Sharing to Administer Excise Taxes**

The legislation allows the IRS to share returns and return information with the U.S. Customs and Border Protection for purposes of administering and collecting the heavy vehicle use tax.