

## **SECURE Act Provisions and Effective Dates**

The SETTING EVERY COMMUNITY UP for RETIREMENT ENHANCEMENT ACT of 2019 (SECURE Act) was signed into law on December 20, 2019. The following is a summary of the main provisions, and effective dates, as related to qualified plans.

### ***Effective for years beginning before, on, or after the date of the enactment***

- Sec. 111 – Clarification of retirement income account rules relating to church controlled organizations.

### ***Date of Enactment***

- Qualified plan loans made through credit cards would be prohibited.
- Annuity purchase safe harbor for plan fiduciaries.
  - Intended to encourage the offering of more lifetime income distribution options.
  - Meant to address the fiduciary liability fears that the selection of an annuity provider will be judged in hind sight years later if the insurer goes belly up.
  - Essentially allows plan fiduciaries to rely on state insurance regulation and issuance of a certificate of authority by the home state that the insurer is financially sound.
  - Still requires a fair amount of due diligence by plan officials.

### ***Plan years beginning after December 31, 2019***

- Automatic enrollment cap for QACA safe harbor plans increased to 15%.
- Safe harbor notice would no longer be required to be given for plans using the non-elective contribution approach.
  - Participants would still need to receive an SPD and otherwise be able to change their deferral election at least once per year.
- Allows a plan to be amended mid-year to become a **non- elective** contribution type safe harbor plan.
  - This is only available for non-elective contribution safe harbor plans (and not matching contribution safe harbor plans).
  - If the amendment is adopted within the last 30 days of the plan year, the QNEC contribution must equal at least 4% of compensation.

### ***Taxable years beginning after December 31, 2019***

- Small employer start-up tax credit for the first 3 years after adopting a new plan equal to the greater of:
  - \$500; or
  - \$250 multiplied by the number of NHCEs eligible to participate up to a maximum of \$5,000.
  - This is a substantial increase from the current limit of 50% of the startup costs up to a maximum credit of \$500 per year for the first 3 plan years.

- An additional small employer tax credit equal to \$500 per year for up to 3 years if plan adds auto enrollment to an existing plan or is included in a new plan.
  - A “small” employer is defined as one who, in the preceding year, had no more than 100 employees receiving at least \$5,000 in compensation. (SIMPLE IRA plan eligibility standard)
- Repeals the maximum age for traditional IRA contributions.
- Lifetime income portability -
  - Plans offering annuity/lifetime income option that will no longer be an authorized plan investment may distribute an annuity contract to allow the participant to maintain the investment.
- New “qualified distributions” for child birth/adoption expenses which are exempted from IRC §72(t) 10% early distribution tax.
  - Would not violate in service distribution rules for elective deferrals in 401(k), 403(b) or 457 plans.
  - Distribution amount capped at \$5,000.
  - Can be repaid back into a qualified plan or IRA.
- Age for Required Minimum Distributions increased from 70 ½ to age 72.
  - Effective for distributions required to be made after December 31, 2019, with respect to individuals who attain age 70 ½ after such date.
- Extension of the deadline for adoption of a new plan to the due date of tax return.
  - For example, a calendar year C corp. could adopt a new plan for its 2020 tax year as late as April 15, 2021 (or October 15, 2021, if there is an extension).
  - Elective deferral contributions could only be made from compensation that is paid after the plan is actually adopted.
  - **\*\*Discrepancy\*\*** some are interpreting this to be effective for plan years beginning after 2021.

### ***Calendar year after December 31, 2019***

- Increased penalties for failure to file various IRS forms.
  - **Form 5500** penalty would increase from \$25 per day (maximum of \$15,000 per year) to \$250 per day (maximum of \$150,000 per year).
  - **Form 8955-SSA** penalty would increase from \$1 per participant per day (maximum of \$5,000 per year) to \$2 per participant per day (maximum of \$10,000 per year).
  - The penalty for failure to provide the **required income tax withholding notice** to the recipient of a plan distribution would increase from \$10 per failure (maximum of \$5,000 per year) to \$100 per failure (maximum of \$50,000 per year).

### ***Plan years beginning after December 31, 2020***

- Pooled Employer Plans (“PEPs”)
  - Allows for open MEPs with no commonality requirement between employers if certain requirements are met.
    - PEP Benefits -
  - Single Plan Document
  - Single Form 5500 Filing
  - Single Plan Audit
  - Significant compliance requirements.

- Mandatory participation in a 401(k) plan by “long-term” part time employees.
  - Employees who have attained age 21 and completed 3 consecutive 12 month periods with at least 500 hours of service would have to be eligible to make at least elective deferral contributions if the employer offers a 401(k) or similar plan.
  - These employees need not receive any employer contributions (including top heavy minimums) and may be “disaggregated” for coverage, ADP/ACP and 401(a)(4) testing.
  - Service in 12 month periods beginning before January 1, 2021 need not be taken into account.
- Form 5500 aggregation - consolidated filings for 414(i) defined contribution individual account plans that:
  - have the same trustee;
  - have the same one or more named fiduciaries;
  - have the same 3(16) plan administrator;
  - have plan years that begin on the same date; and
  - Provide for the same investments or investment options.
  - Avoids the one bad apple rule that applies to MEPs.
  - **\*\*Discrepancy\*\*** some are interpreting this to be effective for plan years beginning after 2021.

#### ***Future regulations to be implemented by Secretary of Labor***

- **Lifetime Income disclosure added to pension benefit statements.**
  - Would require defined contribution plans to include a calculation on the participant benefit statement that converts the account balance into an annuity payment stream.
  - DOL would issue model actuarial assumptions and a model disclosure form.
  - Effective for benefit statements furnished more than 12 months after the later of the issuance of:
    - Interim final regulations;
    - DOL model disclosure; or
    - DOL safe harbor assumptions.

#### ***Other Provisions***

The SECURE Act contains other provisions which, while having some possible interactions with qualified retirement plans, will largely affect estate and tax planning. You may want to visit with your tax attorney or CPA, if you have any questions regarding the possible affects on your personal situation.