

2020 SECURE Act Reference Guide



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Introduction:

Division O—Setting Every Community Up for Retirement (SECURE) Act of 2019

The Setting Every Community Up for Retirement Enhancement Act (the “SECURE” Act) was signed into law by the President Donald Trump on December 20, 2019, as part of the larger Further Appropriations Act of 2020. The Act contains some of the most sweeping legislative changes effecting retirement plans and IRAs in over a decade, and many of the provisions have already gone into effect. What follows is a brief summary of each provision and their effective dates, along with planning considerations that you can incorporate when working with your clients and prospects.

These educational pieces are intended to be informative and provide generalized guidance. They should not be construed as legal advice or provide protection against compliance violations brought on by a consumer, state insurance commissioner or other regulator or litigation. It is the sole responsibility of the financial professional to seek compliance or legal direction specific to their individual situation. These pieces should be used as a means to raise awareness and evaluate business.

101: Multiple Employer Plans (MEP) / Pooled Employer Plans

The Act allows two or more unrelated employers to participate in an “open” multiple employer plan under 401(a), or a plan under 408, consisting of individual retirement accounts. The Act provides relief from disqualification of the tax-favored status of the MEP if one of the members violates the requirements of the plan (“one bad apple” rule).

A designated pooled plan provider is created under this new provision and must meet certain requirements, including being named as a fiduciary and as the ERISA 3(16) plan administrator and must register with the IRS/DOL. Plans will not fail to meet the requirements of this section if the plan sponsor acts with good faith compliance with the law before formal guidance is issued. Each employer retains fiduciary liability in both the selection and on-going monitoring of the pooled plan provider.

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

Planning Takeaways: Allows for unrelated businesses to participate in an open MEP through a pooled plan provider to help ease the cost of plan administration and the burden of administrative duties. This is good news for small employers who have been averse to establishing a retirement plan due to the cost associated with creating and maintaining a workplace retirement plan.

102: Increase in 10% Cap for Automatic Enrollment Safe Harbor After First Year Plan

The Act increases the automatic escalation percentage from 10% of pay to 15% of pay for safe harbor plans under a “qualified automatic contribution arrangement,” after the first year of participation. Automatic enrollment allows an employer to automatically deduct elective deferrals from an employee’s wages, unless the employee affirmatively opts out or chooses to defer a different percentage.

Effective Date: Plan years beginning after December 31, 2019.

Planning Takeaways: Encourages greater retirement savings for employees by automatically increasing contributions to the plan without requiring authorization from the employee to do so. This is part of the Act’s goal of enhancing Americans’ retirement savings, particularly for employees who may have started saving for retirement later in life.

103: Rules Relating to Election of Safe Harbor 401(k) Status

The Act allows an employer to add a 3% non-elective safe harbor feature to an existing plan, provided the feature is elected no later than the end of the 11th plan month of the current year. The non-elective feature may be added as late as the last day for distributing excess contributions for the plan year, if the non-elective safe harbor contribution is increased to 4%. The notice requirement is also eliminated for non-elective safe harbor plans (but not for matching safe harbor plans); the employee must also be permitted to change their deferral election at least once per year.

Effective Date: Plan years beginning after December 31, 2019.

Planning Takeaways: This change permits employers in jeopardy of failing the non-discrimination testing required of non-safe harbor plans to switch to the safe harbor option. By making the 4% non-elective safe harbor contribution to participating employees, ADP/ACP and top-heavy testing is not required. The safe harbor feature allows the business owner to contribute more to his/her own plan without worrying about failing compliance testing.

This provision also allows greater flexibility in design and offers the opportunity to increase employee retirement savings.

104: Increase in Credit Limitation for Small Employer Pension Plan Startup Costs

The Act amends the credit from a flat dollar amount of \$500 to \$500, or the lesser of:

- \$250 for each employee who is not highly compensated and who is eligible to participate in the plan of the eligible employer
- \$5,000.

Qualified start-up costs include expenses related to the establishment and administration of the plan or for the education of employees.

The credit may be taken for the first plan year and two years immediately following the first plan year.

Effective Date: Taxable years beginning after December 31, 2019.

Planning Takeaways: This credit is designed to encourage small businesses to set up workplace retirement plans. A critical goal of the SECURE Act is to enhance opportunities for small businesses to offer new retirement plans and for employees to have an opportunity to increase their retirement savings through their plan participation.

105: Small Employer Automatic Enrollment Credit

The Act creates a new tax credit of \$500 for employers who create new 401(k) or SIMPLE plans with an automatic enrollment feature. This credit may also be applied to an existing plan that adds the automatic enrollment feature. This credit is in addition to the plan startup credit discussed above and is available for three years, beginning with the first year the plan is either established with the automatic enrollment feature or converted to this design, in the case of existing plans.

Effective Date: Taxable years beginning after December 31, 2019.

Planning Takeaways: This creates yet another incentive to small businesses to establish workplace plans for employees, while helping defray the cost of establishing and maintaining the plan for the first three years. It also encourages employees to gradually increase their elective deferral percentages.

106: Certain Taxable Non-Tuition Fellowship and Stipend Payments Treated as Compensation for IRA Purposes

The Act amends the definition of compensation to include taxable non-tuition fellowship and stipend payments received by graduate and postdoctoral students for IRA contribution purposes.

Effective Date: Taxable years beginning after December 31, 2019.

Planning Takeaways: Prior to the law, these types of payments were not considered as “compensation” for purposes of contributing to an IRA. Therefore, students relying exclusively on this form of income could not contribute to an IRA.

107: Repeal of Maximum Age for Traditional IRA Contributions

The Act lifts the requirement that a taxpayer with earned income must be under age 70 ½ by the close of the tax year to make a deductible IRA contribution.

Effective Date: Taxable years beginning after December 31, 2019.

Planning Takeaways: Prior to the amendment, only Roth IRA owners with earned income could contribute at age 70 ½ or older. While this change offers an opportunity for those with earned income to continue to contribute to a deductible Traditional IRA, the owner must still adhere to the RMD rules even if he/she continues to work (refer to Sec. 114 for more info on RMDs).

108: Qualified Employer Plans Prohibited from Making Loans Through Credit Cards and Other Similar Arrangements

The Act prohibits the distribution of plan loans to employees by credit cards or other similar arrangements.

Effective Date: Applies to all loans made after the date of enactment of the Act.

Planning Takeaways: Designed to discourage employees from having easy access to retirement plan balances to use for routine or small purchases, thereby preserving retirement savings. Loans taken by way of credit card going forward will be considered taxable distributions.

109: Portability of Lifetime Income Options

The Act permits defined contribution plans, 403(b) plans, and governmental 457(b) plans to execute a trustee-to-trustee transfer of lifetime income investments to another qualified plan or IRA, if a lifetime income investment is no longer permitted under the terms of the plan.

Effective Date: Plan years beginning after December 31, 2019.

Planning Takeaways: Permits affected employees to preserve their lifetime income investments without incurring surrender charges or fees.

110: Treatment of Custodial Accounts on Termination of Section 403(b) Plans

The Act states that no later than six months after enactment, the Treasury will issue guidance for situations where an employer maintaining a 403(b) custodial account terminates the plan and the account may be transferred in kind to an individual custodial account and maintained as a 403(b) custodial account until paid out. The individual custodial account will be maintained on a tax-deferred basis and will adhere to all the 403(b) rules in effect at the time of transfer to the individual custodial account.

Effective Date: Treasury to issue guidance no later than six months after enactment. Such guidance will be retroactively effective for taxable years beginning after December 31, 2008.

Planning Takeaways: Provides guidance to 403(b) plan sponsors on how to transfer a terminated 403(b) custodian account in-kind to an individual custodial account for the employee or beneficiary to facilitate the plan termination process. The individual account will be maintained as a 403(b) account until paid out subject to the rules governing 403(b) plans.

111: Clarification for Retirement Income Account Rules Relating to Church-Controlled Organizations

The Act clarifies that a retirement income account maintained by a church-controlled organization may include an employee who is a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of compensation, or an employee of a tax-exempt entity controlled or associated with a church and certain employees of church-controlled organizations after separation from service.

Effective Date: Applies to years beginning before, on, or after the date of enactment of the Act.

Planning Takeaways: Provides clarification on which individuals may be covered by plans maintained by church-controlled organizations.

112: Qualified Cash or Deferred Arrangements Must Allow Long-Term Employees Working More than 500 but Less than 1000 Hours Per Year to Participate

The Act adds an additional option for eligibility in defined contribution plans besides the standard one-year and 1,000 hours of service requirement. The new eligibility option must allow employees who work three consecutive years with at least 500 hours of service in each period the option to make elective deferrals to the plan. Any employees who are eligible solely under the new eligibility rule may be excluded from nondiscrimination and coverage testing, as well as top-heavy testing. Matching, and other employer contributions, are also not required to these employees.

Collective bargaining 401(k) plans are specifically excluded from the dual eligibility requirement.

Effective Date: Applies to plan years after December 31, 2020. Years of service before 2021 will not be considered for purposes of measuring the new eligibility requirement.

Planning Takeaways: This provision encourages the inclusion of long-term part-time workers who have historically been excluded from the plan due to the traditional 1000-hour requirement. Because years of service before December 31, 2020 do not need to be considered, plan administrators will have to revise their systems to exclude periods of service before this date.

113: Penalty-Free Withdrawals from Retirement Plans for Individuals in Case of Birth of a Child or Adoption

The Act adds an additional exception to the IRC 72(t) 10% early withdrawal tax in the case of a qualified birth or adoption distribution, which is defined as a distribution from an eligible retirement plan or IRA during the one-year period beginning on the date on which a child of the individual is born, or on which the legal adoption by the individual is finalized. A qualified birth or adoption distribution must not exceed an aggregate total of \$5,000. An eligible adoptee is defined as an individual (other than the child of the individual's spouse) who is under age 18 or is physically or mentally incapable of self-support.

Effective Date: Applies to qualifying distributions made after December 31, 2019.

Planning Takeaways: The distribution will not qualify as a qualified birth or adoption distribution exempt from the 10% early withdrawal tax unless, in the year of distribution, the taxpayer includes the name, age, and TIN of the child or eligible adoptee on the tax return.

Any monies distributed under this exception may be repaid at any time to avoid taxation on the rolled amounts and treated as if the monies were rolled over within the normal 60-day time-frame.

114: Increase in Age for Required Beginning Date for Mandatory Distributions

The Act increases the required minimum distribution age from age 70 ½ to age 72.

Effective Date: Applies to distributions required to be made after December 31, 2019 and applies only to individuals who obtain age 70 ½ after such date.

Planning Takeaways: RMDs were originally put into place as a mechanism to ensure that individuals used their qualified retirement savings during their lifetimes, rather than to transfer wealth. However, this change addresses the fact that individuals are both living longer and working longer. The increase in RMD age will give individuals more time to convert to Roth IRAs, if they so choose, to help mitigate tax risk in retirement.

Qualified Charitable Distributions (QCDs) will remain an option for individuals who are age 70 ½ or older, even if their first RMD isn't required until the year they turn 72.

115: Special Rules for Minimum Funding Standards for Community Newspaper Plans

The Act provides pension funding relief to community newspaper plan sponsors by increasing the interest to calculate funding obligations to 8% and by increasing the amortization period from seven years to 30 years.

Effective Date: Applies to plan years ending after December 31, 2017.

Planning Takeaways: The changes made under this section will give relief to many community newspaper plans struggling to meet the funding obligations under the plan.

116: Treating Excluded Difficulty of Care Payments as Compensation for Determining Retirement Contribution Limits

The Act states that the difficulty of care payments are made to home health workers who care for an individual with a physical, mental or emotional handicap and are excluded from gross income. This provision amends the definition of compensation for defined contribution plans and IRAs to include difficulty of care payments as eligible compensation for purposes of determining contribution limits. Any contributions by the taxpayer made from these payments will be treated as after-tax contributions or investment in the contract.

Effective Date: In the case of contributions to a defined contribution plan, the amendment applies to plan years beginning after December 31, 2015. In the case of IRAs, the amendment applies to contributions made after the date of enactment.

Planning Takeaways: Many home health providers have only their difficulty of care payments as compensation. Prior to this change, these individuals would have been unable to count the payments as compensation and therefore no contributions based upon them could be made to qualified retirement plans and IRAs.

201: Plan Adopted by Filing Due Date for Year May be Treated as in Effect as of Close of Year

The Act permits employers who adopt a qualified retirement plan (stock bonus, pension, profit sharing, or annuity plan) to establish the plan by the employer's tax filing deadline, plus extensions. Prior to this change, a qualified retirement plan must have been adopted by year-end.

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

Planning Takeaways: This change offers greater flexibility for employers wanting to establish a qualified plan by allowing additional time to adopt the plan. From an employee's standpoint, the change may positively impact his/her ability to receive contributions for a prior year. Elective deferrals made by the employee, however, must be made by the end of the plan year and would not receive the same extension as employer contributions to the plan.

202: Combined Annual Report for Group of Plans

The IRS and the DOL, in cooperation, will modify the return requirements such that all members of a group of defined contribution plans may file a single consolidated Form 5500. Plans eligible for consolidated filing must be defined contribution plans with the same trustee, the same one or more fiduciaries, and the same plan administrator. The plans must also operate on the same plan year and provide the same investment options to both participants and beneficiaries.

Effective Date: The DOL and IRS have until January 1, 2020 to modify the requirements and will apply to returns for plan years beginning after December 31, 2021.

Planning Takeaways: This change will ease the administrative burden and expense associated with filing multiple Form 5500's for a group of plans.

203: Disclosure Regarding Lifetime Income

The Act requires a lifetime income disclosure to be added to all defined contribution benefit statements, at least once in a 12-month period. The estimated lifetime income disclosure will be based on a qualified joint and survivor annuity, assuming a spouse of the same age or a single life annuity. The Secretary of Labor is ordered to create a model lifetime income disclosure that is written in a manner to be understood by the average plan participant. No plan fiduciary, plan sponsor, or other person will be held liable for the assumptions made under the model disclosure.

Effective Date: Applies to pension benefit statements provided more than 12 months after the DOL issues guidance through the model disclosure, final rules, and assumptions.

Planning Takeaways: This is a significant nod to the idea that individuals saving for retirement should be more concerned about the amount of income they may expect to receive rather than the value of their retirement savings when preparing for retirement.

204: Fiduciary Safe Harbor for Selection of Lifetime Income Provider

The Act amends Section 404 of ERISA by adding an optional safe harbor for annuity selections within a plan ("guaranteed retirement income contract") that, when followed, would protect plan fiduciaries from liability against any losses in an employee's or beneficiary's account due to the insurance company's inability to satisfy its future obligations under the terms of the contract. This safe harbor option requires that the plan fiduciary complete a due diligence process, which includes engaging in an objective, thorough, and analytical search of identifying insurers from which to purchase contracts within the plan. The Act does not require that the plan fiduciary choose the lowest-cost contract, provided the fiduciary adequately confirms the financial capability of the insurer at the time of selection and obtains written representations from the insurer, and the fiduciary engages in periodic review of the insurer for continued appropriateness of the selection.

Effective Date: No effective date.

Planning Takeaways: This provision further supports lifetime income options as an important part of an overall retirement income plan. The safe harbor option will likely encourage more employers to consider adding an annuity option to the investment choices already present within the plan.

205: Modification of Nondiscrimination Rules to Protect Older, Longer Service Participants

The Act provides relief from nondiscrimination, coverage, and minimum participation relief to frozen defined benefit plans that no longer allow newer employees to participate. Employees covered under the frozen plan will continue to accrue benefits. This relief will be granted provided that the plan's benefits were nondiscriminatory during the year in which the plan was closed and the following two years.

Effective Date: As of the date of enactment without regard to any amendments made before, on, or after the date of enactment, unless plan sponsors elect to apply the provision retroactively to plan years beginning after December 31, 2013.

Planning Takeaways: This provision provides relief for employers who have frozen defined benefit plans provided they meet the stated conditions as of the date of termination plus two years and will continue to allow long-term employees who were grandfathered into the closed plan to accrue benefits.

206: Modification of PBGC Premiums for CSEC Plans

The Act establishes specific funding rules for calculating PBGC premiums for small employer charity plans (CSEC). The flat-rate premium will be \$19 per participant and a variable-rate premium of \$9 for every \$1,000 of unfunded vested benefits.

Effective Date: No effective date.

Planning Takeaways: In 2014, different funding rules were adopted for different types of pension plans—single-employer, multi-employer, and CSEC plans. This will create individualized rules for calculating PBGC premiums based upon plan type.

301: Benefits Provided to Volunteer Firefighters and Emergency Medical Responders

The Act amends the monthly dollar limitation from \$30 to \$50 for any qualified payment from exclusion from income, whether by reimbursement or otherwise, provided by a state or political division for the performance of services by a qualified voluntary emergency response organization.

The Act also extends the exclusion under IRC §139(B) from income any qualified local and state tax benefit or reimbursement payment to any member of a qualified emergency response organization.

The Act also extends the exclusion under IRC §139(B) from income any qualified local and state tax benefit or reimbursement payment to any member of a qualified emergency response organization.

Effective Date: Extends the provision by one year effective for tax years after December 31, 2019.

Planning Takeaways: Unless otherwise extended, this change will expire after tax year 2020.

302: Expansion of Section 529 Plans

The Act expands qualified higher education expenses to include apprenticeships and qualified education loan repayments up to \$10,000 for the 529 plan's designated beneficiary or a sibling of the designated beneficiary, reduced by such distributions taken in prior years.

Effective Date: Distributions made after December 31, 2018.

Planning Takeaways: The \$10,000 loan maximum is considered separately for the 529 plan's designated beneficiary and a sibling. This provision provides some relief from student loan debt and expands the prior qualifying expenses from just tuition to include tutoring, supplies, equipment, and special needs services.

The addition of homeschooling expenses, proposed in a prior version of the bill, did not make it into the final enrolled bill. TJCA 2017, however, did add qualified higher education expenses to include elementary and secondary school tuition, up to a lifetime \$10,000 limit.

401: Modification of Required Distribution Rules for Designated Beneficiaries

The Act shortens the post-death distribution period for designated beneficiaries of defined contribution plans and IRAs to 10 years or less after the death of the employee or IRA account owner. Only these "eligible designated beneficiaries" (defined below) may stretch distributions over life expectancy beginning no later than December 31 of the year following death:

1. A surviving spouse
2. A beneficiary under the age of majority
3. A chronically ill or disabled beneficiary
4. A beneficiary no more than 10 years younger than the decedent

As under current law, surviving spouses may elect to defer distributions until their deceased spouse would have reached his/her required beginning date, now April 1 of the year after attainment of age 72. Refer to Sec. 114 for additional information.

Effective Date: Applies to distributions with respect to employees or IRA owners who died after December 31, 2019.

Planning Takeaways: The 10-year rule effectively replaces the old five-year rule. Under the 10-year rule, no annual RMD is required, but the entire account balance must be distributed by the end of the tenth year following the year of the employee or IRA owner's death. Only eligible designated beneficiaries will be able to use the life expectancy option and, once a minor beneficiary reaches the age of majority (as defined by the child's state of domicile), he/she must switch to the 10-year rule as of the date the age of majority is reached.

This modification was adopted to pay for other favorable changes within the Act. Individuals with large IRA or qualified plan balances who cite legacy planning as an important goal will be most affected. Those who have named trusts as their beneficiaries must re-evaluate the trust language to plan for any unintended tax consequences of the new rule.

Planning opportunities do exist, as Roth conversions and life insurance become even more valuable as legacy planning tools.

402: Increase in Penalty for Failure to File

The Act increases the failure to file penalty to \$435 or 100% of the tax amount due, whichever is less.

Effective Date: Applies to returns for which the due date (including extensions) is after December 31, 2019.

Planning Takeaways: Increasing the penalty will encourage the timely filing of returns and will increase tax revenue for those that do not adhere to the timing requirements.

403: Increased Penalties for Failure to File Retirement Plan Returns

The Act increases penalty for failure to file a Form 5500 (\$250 per day, not to exceed \$150,000) as well as withholding notices (\$100 for each failure, not to exceed \$50,000 for each period) and notification of changes to the plan (\$10 per day, not to exceed \$10,000 for each failure). Failure to file an annual registration statement will result in \$10 per participant per day, not to exceed \$50,000.

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

Planning Takeaways: Increasing the penalties for failure to file Form 5500s, required notices, and annual registration statements will encourage timely filing and will increase tax revenue for those who fail to do so.

404: Increased Information Sharing to Administer Excise Taxes

The Act allows for returns and return information to be shared by the IRS with the U.S. Customs and Border Protection for purposes of collecting the heavy vehicle tax.

Effective Date: No effective date.

Planning Takeaways: This is another provision designed to generate revenue to offset the costs associated with other provisions in the Act.

501: Modification of Rules Relating to the Taxation of Unearned Income of Certain Children

The Act repeals the “Kiddie Tax” on a child’s unearned income being taxed at estate and trust tax rates (under TCJA of 2017), reverting back to using the parents’ top marginal tax bracket, if higher than the tax rate of the child.

Effective Date: Effective for taxable years after December 31, 2019, but may be retroactively applied by a taxpayer to taxable years 2018-2019.

Planning Takeaways: An unintended consequence of the changes made under the Tax Cuts and Jobs Act of 2017 was imposing higher tax liability for families receiving certain types of unearned income like survivor benefits from deceased military parents (Gold Star Families). This change will help lower and middle-income families retain more of these types of unearned income.

601: Provisions Relating to Plan Amendments

Qualified retirement plans, including IRAs, must be amended to reflect the amendments made under the Act.

Effective Date: Amendments must be made by the end of the plan year beginning on or after January 1, 2022. For governmental plans and collectively bargained plans, the deadline is for plan years beginning on or after January 1, 2024.

Planning Takeaways: Many of the provisions are already in affect and, if not, will be prior to the required amendments. Plans and IRA providers are expected to operate according with the new law, including amendments completed before the stated deadline.

Division M: Bipartisan American Miners Act—Section 104 Reduction in Minimum Age for Allowable In-Service Distributions

The Act changes the earliest in-service withdrawal age to age 59 ½ for defined benefit plans, money purchase plans, and governmental 457(b) plans.

Effective Date: Plan years after December 31, 2019.

Planning Takeaways: Prior to the Act, an employee who had not separated from service from an employer sponsoring either a defined benefit plan or money purchase plan could not take an in-service withdrawal until age 62. In-service withdrawals from a governmental 457(b) plan were not permitted until age 70 ½ prior to the law. This provision could encourage employees from taking withdrawals earlier than under prior law leaving less for retirement. On the flip side, it may offer more flexibility for those wishing to move their monies in these plans to another investment alternative.

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