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New Year, New World: A Short Guide to the SECURE Act for Retirement Plan Sponsors and Administrators

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The SECURE Act, included as part of the Further Consolidated Appropriations Act, 2020, was signed into law on December 20, 2019. This new law contains many significant changes that may impact employer-sponsored benefit plans.

Given the scope of the law and the number of changes, we will release a series of blog posts exploring the new rules affecting employer-sponsored benefit plans and outlining best practices for implementation. For a short summary of the SECURE Act changes to health plans, please click here. Below is a chronological guide to the key retirement plan issues raised by the new law, most of which we will address in more detail in upcoming blog posts in this series.

SECURE Act Changes Effective Upon Enactment

- Extends nondiscrimination testing relief for certain closed or "soft-frozen" defined benefit plans, with an option to apply the rules to plan years beginning after December 31, 2013.
- Adds a new safe harbor for a defined contribution plan fiduciary's selection of a lifetime income provider.
- Provides that "qualified disaster distributions" up to $100,000 are exempt from the early distribution penalty tax, if the distribution is taken in connection with federal disasters declared during the period between January 1, 2018 and 60 days after enactment.
- Prohibits making defined contribution plan loans through prepaid credit cards and other similar arrangements.

SECURE Act Changes Effective for Distributions Made After December 31, 2019

- Adds an option for penalty-free withdrawals from defined contribution plan accounts of up to $5,000 (per individual) within one year after birth or adoption of a

qualifying child, with an option to “repay” qualified birth or adoption distributions under certain circumstances.

- Delays the “required beginning age” for minimum required distributions from qualified retirement plans from age 70½ to age 72 with respect to individuals who attain age 70½ after December 31, 2019.
- Caps the period to “stretch” post-death defined contribution plan distributions to 10 years (with exceptions for surviving spouses, minor children, disabled or chronically ill persons, or any person not more than 10 years younger than the employee). Effective for distributions with respect to employees who die after December 31, 2019 (with a delayed effective date for certain collectively bargained plans).

SECURE Act Changes Effective for Plan Years Beginning After December 31, 2019

- Reduces the earliest age that an employee can receive in-service retirement benefits from a pension plan from age 62 to age 59½.
- Increases the cap on the default contribution rate for qualified automatic contribution arrangements from 10% to 15% (but retains the 10% cap for the first year of participation).
- Eliminates the annual safe harbor notice requirement for nonelective 401(k) safe harbor plans.
- Adds an option to retroactively amend a 401(k) plan to become a nonelective safe harbor plan. If the nonelective contribution is at least 4% of compensation, the amendment could be made up until the end of the next following plan year.
- Allows plan participants invested in lifetime income investment options to take a distribution of the investment without regard to plan distribution restrictions—provided that the investment is no longer authorized to be held under the plan and the distribution is made by a direct transfer to another retirement plan or IRA or by distribution of the annuity contract.

SECURE Act Changes Effective for Plan Years Beginning After December 31, 2020

- Requires 401(k) plan sponsors to permit long-term, part-time employees who have at least 500 hours of service (but less than 1,000 hours) in each of the immediately preceding three consecutive 12-month periods to participate in the 401(k) plan for the sole purpose of making elective deferrals. Hours of service during 12-month periods beginning before January 1, 2021, are not taken into account for this rule.

- Permits unrelated employers to participate in an "open" multiple employer retirement plan (eliminating the current employment "nexus" rule) and generally eliminates the "one bad apple" rule under which a tax-qualification violation by one participating employer could potentially disqualify the entire multiple employer plan.

SECURE Act Changes Effective for Plan Years Beginning After December 31, 2021

- Directs the Department of Treasury and the Department of Labor to modify annual reporting rules to permit certain related individual account or defined contribution plans (*i.e.*, plans with the same trustee, fiduciary, administrator, plan year, and investment selections) to file a consolidated Form 5500. Applies to returns and reports for plan years beginning after December 31, 2021.

SECURE Act Changes – Special Effective Dates

- Requires that the Department of Treasury issue guidance within six months of enactment providing that individual 403(b) custodial accounts may be distributed in-kind to a participant or beneficiary in the event of a 403(b) plan termination, with the guidance retroactively effective for taxable years beginning after December 31, 2008.
- Requires defined contribution plan sponsors to provide participants with an annual estimate of monthly income that a participant could receive in retirement if an annuity were purchased with his or her plan account balance—regardless of whether an annuity distribution option is available under the plan. Effective twelve months after the release of DOL guidance.

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Almost all tax-qualified retirement plans will need to be reviewed for possible amendments to reflect the SECURE Act, which provides for a remedial amendment period for making these amendments until the last day of the first plan year beginning on or after January 1, 2022 (with a delayed deadline for certain collectively bargained plans).

Check back here for more detailed analysis of these topics, as our next post will cover key points in the SECURE Act for defined benefit plans. For a more comprehensive list of SECURE Act changes for employer-sponsored retirement and health plans, please click here.

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