# The SECURE Act

Update Q1 2020

# SECURE Act

| S | E | C | U | R | E |
|---|---|---|---|---|---|
| Setting | Every | Community | Up for | Retirement | Enhancement |

Signed into law by President on **December 20, 2019.**

## Purpose

Help Americans save more for retirement by creating new rules.

- Expand and preserve retirement savings
- Improve the administration of retirement plans
- Provide additional benefits and create revenue provisions

# Pooled Employer Plans

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| Current Law | SECURE Act |
| --- | --- |
| **MEP** Multiple Employer Plan | **PEP** Pooled Employer Plan |
| Unrelated employers adopting a single plan were part of a multiple employer plan<br><br>There had to be some commonality amongst them to do so. | Allows multiple unrelated employers to join a single plan. |

# Pooled Employer Plans

**Requirements**

- There must be a designated PPP who serves as the 3(16) fiduciary/administrator.
- The PPP must register with regulatory agencies and maintain a $1 million ERISA bond.
- While many fiduciary responsibilities will be lifted from the adopting employers, they are still tasked with the prudent selection and monitoring of the PPP.

"Bad apple" rule eliminated so that noncompliance by one adopting employer does not taint the plan for other adopting employers.

Applicable to plan years beginning after **December 31, 2020**

## RPAG Comment

*The goal in joining a PEP is for participants to reap savings due to the combined scale of the PEP, and for employers to offload some fiduciary responsibilities.  The costs of 5500 filing would be a minimal savings, but the industry believes once the PEPs reach scale (not necessarily an overnight guarantee) the small plans could gain access to institutionally priced investment options. Small plans that are RPAG clients already have access to institutionally priced investment options in collective investment trusts due to RPAG's scale.*

# Timing for Plan Establishment

Employers may start a qualified plan up until their business tax filing deadline (including extensions).

This gives them more time to establish a profit sharing or defined benefit plan

Elective deferrals cannot take advantage of the extension.

Applies to plan years beginning after **December 31, 2020**

# Credits for Small Employers

# Small Employer Plan Start-Up Credit

**Credit granted to small employers Increased to the greater of**

- **$500**
- The lesser of
  - **$250** each eligible employee who is not a HCE
  - **$5,000**

This credit can be applied for the first three years the plan is in effect.
Plan years beginning after **December 31, 2020**

# Small Employer Automatic Enrollment Credit

New Credit Limit

**$500/year**

*For the **first three years** that a new or existing 401(k) or SIMPLE IRA include an automatic enrollment feature.*

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

# Fiduciary Safe Harbor

# Fiduciary Safe Harbor for Selection of Annuity

Allows plan fiduciaries to follow yet-to-be-provided guidelines for the selection of insurers of annuity products to offer via their plans.

Intended to protect fiduciaries providing annuity options from liability that may result from losses the selected products may encounter due to an insurer's inability to satisfy future financial obligations.

## Effective Date

To be determined

### RPAG Comment

*This may be applicable to both annuity distribution options and/or in-plan lifetime guarantee income investment options. Additional guidance from the Department of Labor yet to come. This is a long-awaited and welcome safe harbor that should assist in the deaccumulation/distribution phase of retirement planning for individuals.*

# 401(k) Safe Harbor Design Election

**Prior law**

Plans had to provide a notice to employees prior to the plan year in which it intended to be safe harbor design.

**SECURE Act**

Requirement removed for plans intending to meet the safe harbor design rules by providing a nonelective contribution

Plan sponsors may still opt to change a safe harbor election at least once per year.  And plan sponsors may switch to safe harbor design if utilizing the nonelective contribution any time before the 30th day prior to close of the plan year.

Amending the plan anytime later than that date to become safe harbor design is allowed if the nonelective contribution is at least 4% of compensation (verses 3%) and the plan is amended no later than the close of the following plan year.

## RPAG Comment

*This change provides tremendous flexibility for plan sponsors who may wish to see if their plan passes nondiscrimination testing before deciding if they wish to amend their plan to become safe harbor.  However, there is a cost associated with this flexibility as a non-pre-plan year notice safe harbor election would necessitate the nonelective contribution rather than the safe harbor match.*

Applicable to plan years beginning after **December 31, 2109**

# Lifetime Income Disclosures

On a 12 month basis participants of defined contribution plans are to receive a disclosure that illustrates **the monthly payments they can expect to receive** if the total account balance of their plan at that point in time (with interest assumptions) was used to provide a lifetime income streams

The disclosure has to include a qualified joint and survivor annuity for participant and their spouse and single life annuity.

Will apply to benefit statements that are furnished **more than 12 months following DOL guidance**, however the guidance is directed to be provided **within one year** of the Act's enactment

## RPAG Comment

*The Department of Labor has been directed to provide plan sponsors with a model disclosure. So additional guidance is expected. In addition, this disclosure is not meant to encumber the plan sponsor with any additional liability as a result of the projections.*

# Eligibility for Long Term Part Time Employees

# Eligibility for Long Term Part Time Employees

**Current law**

Employee may be excluded from eligibility should they not meet the 1,000 hours per year requirement.

**SECURE Act**

Employee must be eligible to participate in the plan (unless collectively bargained).

**REQUIREMENTS**

- employed for 3 consecutive 12 month periods
- within which they provided 500 hours of service
- and they meet the plan's minimum age threshold

# Eligibility for Long Term Part Time Employees

**Plans**

- are allowed to exclude these part time eligible employees from the following testing:
  - nondiscrimination
  - coverage
  - top-heavy testing
- may continue to apply the more restrictive 1,000 hours requirement for employer contributions
  - like match or profit sharing contributions

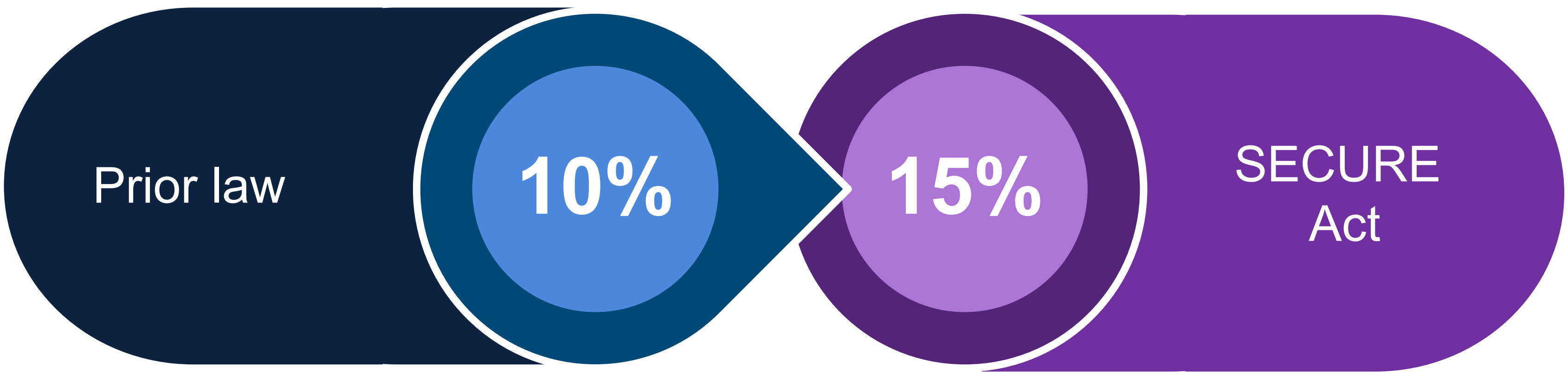
## RPAG Comment

*This will require double tracking for plans that provide for two different service limitations on eligibility. They will have to track the 1,000 hours requirement and the 3-year/500 hours requirement. This will require amendment of the plan document.*

- Effective for Plan Years beginning after December 31, 2020
  - Do take into account 12 month periods start prior to January 1, 2021

# QACA Escalation Cap Raised

Compensation limit for plans availing themselves of the **qualified automatic contribution arrangement (QACA) safe harbor** cannot automatically escalate deferrals beyond:




Applies to plan years beginning after **December 20, 2019.**

## RPAG Comment

*Why there is a cap at all is open to question as long as there is a minimum provided and participants have the ability to opt-out. That said, raising the cap allows for greater flexibility for plans to assist their employees with saving appropriate amounts to reach retirement goals. This change would necessitate a plan amendment.*

# Lifetime Income Portability

# Lifetime Income Portability

Prior Law

Plans that provided investments that had a lifetime income guarantee component often faced a quandary

In electing to invest in the option participants would have paid a premium for the lifetime guarantee component.

If plan fiduciaries determined the option to no longer be a prudent offering, removing the option would result in participants paying that premium for nothing.

This left fiduciaries locked into a less-than-ideal solution of keeping the options, but perhaps freezing it to new monies.

# Lifetime Income Portability

SECURE Act

Allows plans to make a direct trustee-to-trustee transfer of these investment options to another plan or IRA

This keeps the lifetime income guarantee component, for which participants paid, intact, but allows fiduciaries to remove it as an option from their plan should they determine it to no longer be a prudent offering on their investment menu.

Applies to plan years beginning after **December 31, 2019.**

## RPAG Comment

*The Act solves for the lack of portability of these options from a legal perspective, which should encourage fiduciaries in the consideration of offering such options within their plan. However to make this fully functional the industry is still dependent upon providers creating IRAs that are capable of receiving these vehicles and maintaining the key lifetime guarantee component intact. Thus, while the Act has provided a crucial element to increasing the viability of offering these options within plans, the industry still needs create the outlets necessary to effectuate the actions contemplated by the Act. Stay tuned . . .*

# Custodial Accounts for Terminated 403(b)s

Under the SECURE Act

If a plan sponsor terminates a

**custodial 403(b) plan**

they may distribute individual custodial accounts in-kind to participants/beneficiaries.

## RPAG Comment

*The Department of Treasury has been directed to provide additional guidance, however the guidance shall have a retroactive effect.*

Treasury guidance to be issued no later than **6 months** following enactment of Act.

# Prohibition of Credit Card Plan Loans

# Prohibition of Credit Card Plan Loans

Retirement plans may no longer provide participant loans via credit card.

If these are allowed by the plan the amounts will be deemed distributions from the plan and become taxable, including potential excise taxes.

## RPAG Comment

*The allowance of credit card-based plan loans was a terrible idea to begin with as it allowed participants to use their retirement savings as a checking account, thereby draining their future assets. This part of the Act is a sobering reminder that not all technological advances in the retirement industry have positive outcomes following enactment of Act*

Applies to loans made **after date** of enactment of the Act

# Nondiscrimination Rules for Closed Defined Benefit Plans

The SECURE Act

Modifies the nondiscrimination rules as they are applicable to frozen pension plans that continue to accrue benefits for existing participants

This is meant to protect benefits for more mature and tenured employees nearing retirement

Effective **on date of enactment of Act**
**or for plan years 2014 and later,** if elected

# Single Annual Report for Group of Plans

The SECURE Act

directs the IRS and the Department of Labor to provide for a single consolidated Form 5500 for defined contribution plans with a common:

- Trustee
- Fiduciary(ies)
- Plan year
- Investment options

Implementation **no later than January 1, 2022**
Applies to returns for plan years **after December 31, 2021**

# Reporting Penalties

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**Penalty fees have increased**

Filings and notices required to be filed/provided
**after December 31, 2019.**

# Reporting Penalties

Failure to file
**Form 5500**

**$250**
per day

maximum of
**$150,000**

# Reporting Penalties

Failure to file
**Form 9855-SSA**
(deferred benefit)

**$10**
per day

maximum of
**$50,000**

# Reporting Penalties

Failure to provide **withholding notices**

**$100** per failure

maximum of **$50,000**

For all failures during a calendar year

# Distributions

# Delayed Age for Required Minimum Distributions

Required minimum distributions (RMDs) trigger age moved back

age **70½** → age **72**

Applicable to:

- IRA's
- 401(k)s
- profit sharing plans
- 403(b)s
- governmental 457(b)s

Applies to distributions made **after December 31, 2019**
for individuals who attain **age 70½** after such date

# Distribution Timing for Designated Beneficiaries

Non-spouse beneficiaries will generally be required to take distributions within 10 years.

Exceptions for those who, at time of account owner's death are:

- Disabled individuals
- Beneficiaries whose age is within 10 years of account owner's age
- Minors (begin 10 year payout upon age of majority)
- Chronically ill
- Recipients of annuitized payments that began prior to enactment of the Act

Applicable to distributions with respect to employees who cease to live
**after December 31, 2019**

## RPAG Comment

*This generally eliminates the "stretch IRA" which allowed beneficiaries to stretch out the tax-deferral advantages of a plan or IRA by taking distributions over the beneficiary's life or life expectancy.*

# Distributions for Birth/Adoption Expenses

Plan can be amended to waive any excise tax under **Internal Revenue Code section 72(t)**

- Childbirth expenses
- Adoption expenses

up to **$5,000**

Applies to distributions made after **December 31, 2019**

**RPAG Comment**

*The $5,000 seems to be an individual basis, so potentially each spouse could take out $5,000 without penalty. We will wait to see additional guidance on this topic.*

# IRA Age Limitation

Age limits for Individuals with earned income to make contributions to traditional IRAs

| Current Law | SECURE Act |
| --- | --- |
| **70½ age limit** | **No age limit** |

Applies to contributions and distributions made for tax years **after December 31, 2019**

# Graduate & Postdoctoral Students

Non-tuition fellowship payments

Stipends

are to be treated as earned income for IRA contributions.

Applies to tax years beginning **after December 31, 2019**

# Individuals that May be Covered by Church Plans

Individuals that may be covered by a church plan include:

Employees of a tax-exempt organization that are controlled/associated with church/convention/association of churches

Duly ordained, licensed, or commissioned ministers

Some employees post-separation

Applies to **all years**

# Community Newspaper Plans

Pension funding relief for community newspaper plans sponsors adjusts:

interest rates

amortization periods

to reduce the amount employers are required to contribute.

Applies to plan years ending **after December 31, 2019**

# Difficulty of Care Payments

The Act allows home health care workers that contribute to a:

PLAN

IRA

to provide that tax-exempt difficulty of care payments be treated as compensation in the calculation of contribution limits.

Applies to contributions **after date of enactment**

# CSEC Plans

Individualized rules are established for calculating PBGC premiums for

- Single-employer plans
- Multiemployer plans
- Cooperative plans
- Small employer charity (CSEC) plans

# 529 Plans

529 accounts may now cover costs of:

- Registered apprenticeships
- Qualified education loan repayments.

Applicable to distributions made **after December 31, 2019**

# Disaster Relief

# Disaster Relief

Waiver from excise tax
**under Code section 72(t)**
for qualified disaster distributions
from qualified plans

up to
**$100,000**

Applicable to individuals suffering losses in qualified disaster area
**beginning after 2017 and ending 60 days after date of enactment of Act**

# Disaster Relief

Income tax can be spread **over three year period.**

Individuals may repay the distribution **over three year period.**

Individuals who took first-time home purchase hardship distribution in disaster area which didn't occur due to disaster are able to recontribute amount back to plan **without penalty**.

Loan limits subject to relief increased to **$100,000** and repayment period is extended.

Applicable to individuals suffering losses in qualified disaster area
**beginning after 2017 and ending 60 days after date of enactment of Act**

# Bipartisan American Miners Act (part of FCAA)

In-service Distribution Age lowered

Current law

62

59½

SECURE Act

May be allowed by certain governmental institutions

Applies to plan years beginning **after December 31, 2019**

# Remedial Amendment Period

Generally speaking, the SECURE Act provides a

remedial amendment period

- until the **2022** plan year
- until **2024** for Code section 414(d) governmental plans
- **later date** if Treasury provides for any amendment

# Disclosures

Information contained herein is intended to provide you with a brief overview of the coverages and services provided for reference purposes only. Some information provided herein is for general informational purposes and should not be interpreted as legal advice. We believe the information is accurate, however, we make no warranty or guarantee regarding the accuracy or reliability of the content. [FIRM NAME] and its subsidiaries do not provide legal or tax advice. We recommend that our clients consult an attorney or tax professional regarding the application or potential implications of laws, regulations or policies to their specific circumstances and strategy.

All investments involve varying levels and types of risks. These risks can be associated with the specific investment, or with the marketplace as a whole. Loss of principal is possible.

This information was developed as a general guide to educate plan sponsors and is not intended as authoritative guidance or tax/legal advice. Each plan has unique requirements and you should consult your attorney or tax advisor for guidance on your specific situation.

The target date is the approximate date when investors plan to start withdrawing their money. Generally, the asset allocation of each fund will change on an annual basis with the asset allocation becoming more conservative as the fund nears the target retirement date.

**Mutual funds are sold by prospectus only. Before investing, investors should carefully consider the investment objectives, risks, charges and expenses of a mutual fund. The fund prospectus provides this and other important information. Please contact your representative or the Company to obtain a prospectus. Please read the prospectus carefully before investing or sending money.**

For more information regarding the SECURE ACT, please click here.

[Securities disclosure] ACR#344895 3/20

# Thank You


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