

# Single Employer Benefits & Pension Alert

THE SECURE ACT - IMPACT ON EMPLOYER-PROVIDED RETIREMENT PLANS | FEBRUARY 2020

## BACKGROUND

The Setting Every Community Up for Retirement Enhancement Act, referred to as the SECURE Act, was signed into law on December 20, 2019, as part of the Further Consolidated Appropriations Act, 2020 (together the "Act"). The following is a summary of the ways the Act changes existing law governing employer-provided retirement plans.

### A. REQUIRED MINIMUM DISTRIBUTION CHANGES

- The Act increases the age at which required minimum distributions must begin, from 70-1/2 to 72.
- Under the Act, a participant's required beginning date is April 1 of the calendar year following the calendar year in which the participant reaches age 72 (or, for a non-5% owner, in which the participant terminated employment, if later).
- This change may affect the portion of a distribution that is eligible for rollover.

These changes are effective for distributions required to be made after December 31, 2019, with respect to individuals who turn 70-1/2 after such date.

### B. DEATH BENEFITS UNDER DEFINED CONTRIBUTION PLANS

- Pursuant to the Act, a participant's accounts under a defined contribution plan must generally be distributed within 10 years of the participant's death, unless the beneficiary is a spouse, a disabled or chronically ill individual, an individual not more than 10 years younger than the participant, or a child under the age of majority.

This change is generally effective for distributions with respect to participants who die after December 31, 2019 (or after December 31, 2021, for governmental and certain collectively bargained plans).

### C. PARTICIPATION OF LONG-TERM, PART-TIME WORKERS IN 401(K) PLANS

- The Act prohibits a 401(k) plan from applying an exclusion based on service to employees who have completed at least 3 consecutive 12-month periods of service, with at least 500 hours of service in each of the 12-month periods.
- In the past, employers had been generally allowed to exclude employees who work less than 1,000 hours per year from coverage under a 401(k) plan. The Act will require certain employers to amend their 401(k) plans to allow for eligibility following 3 consecutive 12-month periods with at least 500 hours of service.
- Employees eligible under the new eligibility standard may be excluded from receiving employer contributions and may be excluded when applying nondiscrimination testing.

This change is effective for plan years beginning after December 31, 2020. However, for purposes of meeting the 3-year, 500-hour requirement, years of service prior to January 1, 2021, are not taken into account.

#### D. SAFE-HARBOR 401(K) PLAN CHANGES

- The Act eliminates the participant notice requirement for non-elective contribution safe-harbor 401(k) plans. However, the Act does not eliminate the participant notice requirement for matching contribution safe-harbor 401(k) plans.
- The Act allows a 401(k) plan (that is not using a matching contribution safe-harbor) to be amended up to 30 days prior to a plan year end, in order to provide a 3% non-elective contribution safe-harbor for that plan year. If a plan is amended to utilize a 4% non-elective safe-harbor, the amendment may be adopted as late as the end of the following plan year.
- The maximum automatic contribution rate under a qualified automatic contribution arrangement, for years after the participant's first plan year, is increased from 10% to 15% of eligible compensation.

These changes are effective for plan years beginning after December 31, 2019.

#### E. WITHDRAWALS UPON BIRTH OR ADOPTION OF CHILD

- Under the Act, in-service withdrawals by a participant of up to \$5,000 from a defined contribution plan for qualified birth or adoption expenses are exempt from the 10% penalty tax that is ordinarily applicable to pre-age-59-1/2 distributions.

This change applies to in-service withdrawals made after December 31, 2019.

#### F. FEDERAL DISASTER RELIEF PROVISIONS

- The Act contains temporary disaster-relief provisions with respect to major disasters (as declared under Federal law by the President) occurring between January 1, 2018, and February 18, 2020.
- These provisions state that “qualified disaster distributions” of up to \$100,000: (i) are exempt from the 10% premature distribution penalty tax; (ii) may be repaid within 3 years into a qualified plan or IRA; and (iii) may be included in an individual's income, spread ratably over the 3-year period beginning with the year of the distribution.
- The Act also increases the amount a participant, who is living in a qualified disaster area and suffered an economic loss due to the disaster, may take in the form of a plan loan, from \$50,000 to \$100,000, for the 180-day period beginning on December 20, 2019.

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## G. PENSION PLAN IN-SERVICE DISTRIBUTIONS

- The earliest age at which defined benefit and money purchase pension plans may provide for in-service distributions is reduced from 62 to 59-1/2.

This change is effective for plan years beginning after December 31, 2019.

## H. CLOSED DEFINED BENEFIT PLANS

- The Act provides for nondiscrimination relief for defined benefit plans in which participation has been closed, provided that the plans meet certain criteria specified by the Act.

This relief for closed defined benefit plans is effective December 20, 2019. However, plan sponsors may elect for this change to apply to plan years beginning after December 31, 2013.

## I. ANNUITY SELECTION FOR DEFINED CONTRIBUTION PLANS

- The Act adds a safe-harbor provision pursuant to which a fiduciary under a defined contribution plan, when acquiring an annuity contract, may rely upon certain, written representations from an insurance company regarding its financial health, and may consider reasonable costs without selecting the annuity contract with the lowest cost.

These provisions are effective as of December 20, 2019.

## J. DISTRIBUTIONS OF LIFETIME INCOME INVESTMENTS

- The Act amends the law to allow a participant in a defined contribution plan, under certain circumstances, to receive a distribution of a lifetime income investment without regard to the law's in-service withdrawal restrictions, if the lifetime income investment ceases to be offered as an investment option under the plan.

This change is effective for plan years beginning after December 31, 2019.

## K. LIFETIME INCOME DISCLOSURE

- The Act requires that a participant in a defined contribution plan be provided each year with a "lifetime income disclosure." This disclosure must show a participant the monthly annuity amount that could be purchased with his or her account.

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This disclosure will not be required until 12 months after guidance is issued by the Department of Labor.

#### **L. PLANS ARE NOT PERMITTED TO MAKE LOANS THROUGH CREDIT CARDS OR SIMILAR ARRANGEMENTS**

- The Act prohibits plan loans being made through credit cards or similar arrangements.

This change is effective for loans made after December 20, 2019.

#### **M. FAILURE TO FILE RETIREMENT PLAN RETURNS – INCREASED PENALTIES**

- The Act increases the penalty associated with a failure to file a Form 5500 from \$25 per day to \$250 per day, and increases the cap on the penalty for each failure to \$150,000.
- The Act increases the penalty associated with a failure to file a Form 8955-SSA from \$1 per day per participant to \$10 per day per participant, and increases the cap on the penalty to \$50,000.

These penalties apply for filings due after December 31, 2019.

#### **N. NEXT STEPS**

Please contact us if you would like to discuss these changes outlined above. Except as noted below with respect to amendments for in-service distributions from pension plans or disaster relief, the deadline for plan amendments will generally be the last day of the first plan year beginning on or after January 1, 2022 (and no earlier than the end of the 2024 plan year for governmental plans). However, the plan must, in operation, comply with any required changes, beginning on the effective dates specified above.

If a plan sponsor implements new in-service distribution provisions for a pension plan, as described in Section G, an amendment must be adopted by the end of the plan year in which the change is to be effective. If a plan sponsor intends to adopt the disaster relief provisions outlined in Section F, any necessary plan amendment must be adopted before the last day of the first plan year beginning on or after January 1, 2020 (January 1, 2022, for governmental plans).

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