

The SECURE Act: Changing the Retirement Plan Landscape

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The Setting Every Community Up for Retirement Enhancement Act, better known as the SECURE Act, is the most significant piece of retirement plan legislation since the Pension Protection Act of 2006. The SECURE Act includes several changes to existing retirement plan rules that are designed to improve employees' access to retirement plans and make it easier to save. While the bill was easily passed by the House in May 2019, it was considered dead until it was attached to a year-end spending package and signed into law by President Trump on December 20, 2019.

Plan sponsors should immediately start considering how the changes included in the SECURE Act could impact their defined contribution (DC) and defined benefit (DB) retirement plans. The following chart summarizes the provisions of the SECURE Act, highlights the effective dates and the types of plans affected, and provides a brief summary of the impact to retirement plan sponsors and participants.

SECURE ACT PROVISION	PLAN TYPE AFFECTED	EFFECTIVE DATE	IMPACT AND COMMENTS
Distributions & Withdrawals			
Required Minimum Distribution (RMD) commencement age raised from 70½ to 72	401(a)/401(k)/403(b)/457(b)/IRA /Defined Benefit Plans	RMDs required to be made after 12/31/19, for individuals who reach age 70½ after that date	Participants who retire (or active employees who are 5% owners) and turned age 70½ in 2019, will still need to take an RMD for 2019 by 4/1/2020, and for 2020 by 12/31/2020.
"Stretch IRA" (ability to stretch required minimum distributions over the lifetime of a beneficiary) restricted to 10 years, with certain exceptions	401(a)/401(k)/403(b)/governmental 457(b)/IRA	Participants who die after 12/31/19 (12/31/21 for governmental plan participants; 12/31/21 or date of contract termination, if earlier, for collectively bargained employees)	The "Stretch IRA" provision was popular among large account balances holders to avoid passing along a tax burden to their beneficiaries. That provision has now been restricted, except for spouses, minor children (for whom a 10-year clock starts after they are no longer minors), disabled/chronically ill individuals, and beneficiaries less than 10 years younger than the employee.
Birth/adoption-related distributions of up to \$5,000 permitted with 10% premature distribution tax penalty waived	401(a)/401(k)/403(b)/governmental 457(b)/IRA	Distributions for qualifying birth/adoption expenses made after 12/31/2019	This is an optional provision; plan sponsors are not required to elect it. Distributions are taxable, but exempt from the 10% premature distribution penalty. Distributions can also be repaid to the plan as a rollover contribution (and would then be treated as a rollover for tax purposes) to avoid taxation.
Disaster-related 10% premature distribution tax penalty waived	401(a)/401(k)/403(b)/457(b)/IRA	Distributions for disaster losses incurred from 1/1/2018 to 2/20/2020	This was actually NOT part of the SECURE Act, but a separate bill also included in the year-end appropriations bill. Other favorable retirement plan treatment applies to these individuals as well, such as repayment of distributions and increase in loan limits.
Lowering of in-service distribution age to 59½ for certain retirement plans	Defined benefit plans, 401(a) money purchase plans, governmental 457(b) plans	2020 and later plan years	This was actually NOT part of the SECURE Act, but a separate bill also included in the year-end appropriations bill. Previously, the minimum age for in-service distributions for governmental plans was 70½, and 62 for defined benefit and money purchase plans. Most other plan types already allow for in-service distributions at age 59½. Plan sponsors can elect not to allow in-service distributions.

Eligibility & Enrollment			
Long-term, part-time employees must be permitted to make elective deferrals to 401(k) plans	401(k) plans EXCEPT collectively bargained plans	Technically for 2021 and later plan years, but not effective as a practical matter until 2024 plan year	Employees must have three consecutive years of 500-999 hours of employment to be eligible, beginning after 1/1/2021 (previous employment does not count). Note that 403(b) plans already allow these employees to make elective deferrals, due to universal availability rules.
Increase in the Qualified Automatic Contribution Arrangements (QACAs) cap on elective deferrals from 10% to 15%	401(k) and 403(b) plans that use a QACA	2020 and later plan years	This is an optional provision. In a QACA, deferrals must auto-escalate to at least 6%. The auto-escalate cap has been raised from 10% to 15%.
Elimination of the annual notice requirement for certain Safe Harbor plans	Safe Harbor 401(k) and 403(b) plans with a 3% non-elective contribution	2020 and later plan years	Safe Harbor plans with a matching contribution still have a notice requirement.
Annuities & Lifetime Income			
Lifetime income estimate required on participant statements	ERISA defined contribution plans	12 months after the date of issuance of Department of Labor (DOL) guidance	This should have minimal impact, as many recordkeepers already provide lifetime income estimates to participants on their website and/or statements.
New provider selection Safe Harbor for plan sponsors who wish to add a lifetime income annuity option to their plans	ERISA defined contribution plans	Immediately	Provides some protection to plan sponsors who add a lifetime income annuity option to their plan, if they follow guidelines in selection process. (Many 403(b) plans already have lifetime income annuity options.)
Continuance of lifetime income annuity options outside the plan, even if plan discontinues the option	401(a)/401(k)/403(b)/governmental 457(b)	2020 and later plan years	This is accomplished by the transfer to another defined contribution plan/IRA or the distribution of the annuity contract by the participant.
IRAs and 529s			
Contributions to a traditional IRA may be made at any age (elimination of maximum contribution age of 70½)	IRAs	2020 and later tax years	
Student loan debt repayment expenses up to \$10,000 can be made from 529 plans for certain apprenticeship expenses	529 plans	Distributions after 12/31/2019	Being able to use a 529 plan to pay for a child's student loan debt might increase the ability of an employee to save in his/her retirement plan.
Multiple Employer Plans (MEPs) / Pooled Employer Plans (PEPs)			
A new type of MEP plan, known as a Pooled Employer Plan, will be permitted for employers that are not related to one another	Pooled Employer Plans (PEPs)	2021 and later plan years	In theory, this should create opportunities for small, unrelated employers to band together to improve their purchasing power. Plans must have the same Pooled Plan Provider, or PPP.
MEPs will be permitted to file shorter 5500 small plan filings, if there are fewer than 1,000 participants in the MEP, provided that each individual employer has fewer than 100 participants	Multiple Employer Plans (MEPs)	Filings for 2021 and later plan years	
Multiple Employer Plans (MEPs) will no longer be subject to the "one bad apple" rule, where qualification failures of one employer could disqualify an entire MEP plan	Multiple Employer Plans (MEPs)	2021 and later plan years	This is a welcome removal of a common barrier to such arrangements.
Penalty Increases			
Penalties increased for late 5500 filings from \$25 to \$250 per day, capped at \$150,000 per year (up from \$15,000)	ERISA plans	Filings due after 12/31/2019	This is a substantial increase, so plan sponsors will want to ensure they file their returns on time.
Penalties increased for late Form 8955-SSA filings from \$1 to \$10 per day per participant listed in the filing, capped at \$50,000 per year (up from \$5,000)	ERISA plans	Filings due after 12/31/2019	This is the form that identifies terminated plan participants who choose to leave their benefits in the plan. A similar penalty increase applies for failing to report a required change to the form (e.g., a plan merger).
Penalties increased for failure to provide withholding notices from \$10 to \$100 for each failure, capped at \$50,000 per year (up from \$5,000)	All retirement plans and IRAs	Notices due after 12/31/2019	Plan sponsors should confirm that their recordkeeper/TPA is providing these notices in a timely fashion.

Compensation and Taxation			
Increase in the tax credit cap for certain plan start-up costs (from \$500 to as much as \$5,000)	Retirement plans for tax-paying entities under 100 employees	2020 and later plan years	The cap on credit is the lesser of \$5,000 or \$250 multiplied by the number of non-highly compensated employees eligible to participate in the plan. An additional \$500 credit applies for three years after the establishment of a qualified automatic contribution arrangement (QACA).
“Difficulty of care” payments for foster children can be included as compensation for retirement purposes	All defined contribution retirement plans and IRAs	Retroactive to 2016 and later plan years	Contributions attributable to this type of compensation will be considered as after-tax contributions and will not be subject to the 415 limit.
Certain taxable non-tuition fellowship and stipend payments are includable as compensation	IRAs	2020 and later tax years	This should have no impact on retirement plan sponsors, other than making IRAs more attractive for individuals who receive this type of income.
Tax exclusion restored for benefits paid to volunteer firefighters and emergency medical responders, and increased from \$30 to \$50 per month	N/A	2020 and later tax years	Reinstates a tax exclusion that had previously existed in the Code, and could presumably be used to fund a modest retirement benefit for such volunteers.
Defined Benefit			
Relief from non-discrimination testing requirements for closed or “soft-frozen” defined benefit plans to allow certain participants to continue to accrue benefits	Defined benefit plans	Immediately, or retroactive to 2014 and later plan years, at the election of the plan sponsor	This is intended to help older, longer-service employees. In order to be eligible for this provision, plans must have closed prior to 4/5/2017, or have been in effect for at least five years without a substantial increase in coverage or benefits during that time.
PBGC premium payments for cooperative and small employer charities (CSECs) modified	Defined benefit plans of cooperative and small employer charities (CSECs)	Plan years beginning after 12/31/2018	New premiums: flat-rate premiums of \$19 per participant, and variable rate premiums of \$9 for each \$1,000 of unfunded vested benefits.
Special funding rules for defined benefit plans of community newspapers added	Defined benefit plans of certain community newspapers	2018 and later tax year	Provides funding relief to such plans due to modification of interest rates, amortization schedules, etc.
Miscellaneous Provisions			
403(b) custodial accounts (mutual funds) in terminated plans will be treated as distributed, if distributed “in-kind” to participants, allowing the participant to continue to maintain the 403(b) account outside of the plan	403(b) plans	Retroactive to 2009 and later tax years	The Treasury has been directed to issue guidance in this regard, which will presumably make it far easier to terminate 403(b) plans.
Plans with the same trustee, fiduciaries, administrator, plan year, and investments may now be permitted to file a single 5500, rather than separate 5500s for each plan	ERISA defined contribution plans that provide for individual accounts (most defined contribution plans)	2022 and later plan years	This will be especially helpful to “mirror plans” maintained by the same employer, but may be helpful to unrelated employers as well.
Employers permitted to add a Safe Harbor feature to an existing plan up to 30 days prior to the close of the plan year with a 3% qualified non-elective contribution or as late as the end of the following plan year with a 4% qualified non-elective contribution	Safe Harbor 401(k) and 403(b) plans with a 3%/4% non-elective contribution	2020 and later plan years	This flexibility will help employers to correct failed ADP/ACP testing by shifting to a Safe Harbor plan and making a non-elective contribution to participants. Safe Harbor plans with a matching contribution are not eligible for this new feature.
403(b)(9) church plan retirement income accounts can cover employees of tax-exempts controlled by, or affiliated with, a church	Church 403(b) plans with 403(b)(9) retirement income accounts	Plan years beginning on or after 12/20/2019	This is useful clarification for church plan sponsors, many of whom were already under the impression that these employees could be covered.
Plans are prohibited from making loans through a credit card or similar arrangement	All defined contribution retirement plans with a loan feature	Immediately	This should have minimal impact, as these arrangements are rare.
Retroactive adoption of certain new retirement plans now permitted up to the filing deadline of the sponsoring employer's tax return for initial tax year of the plan	Most 401(a) plans	Plans adopted for 2020 and later tax years	Plans are required to have a written plan document in place prior to any elective deferrals being made.

Stay tuned to Cammack Retirement Group as we help navigate the impact of the SECURE Act for retirement plan sponsors and fiduciaries.

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For more information on our services, please contact **Mike Volo**, Senior Partner, at **781.997.1426** or **mvolo@cammackretirement.com**.

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