Setting Every Community Up for Retirement Enhancement (SECURE) Act

As Enacted on December 20, 2019 · Prepared for LPL by Davis & Harman LLP

Top 10 Key Provisions

1. **Open Multiple Employer Plans / Pooled Employer Plans** – The SECURE Act allows unrelated small employers to band together in "open" 401(k) multiple-employer plans (MEPs; also referred to as pooled employer plans (PEPs)). This reduces the costs and administrative duties that each employer would otherwise bear alone. The Act also eliminates the "one-bad-apple" rule under which a violation by one employer participating in a MEP can trigger severe penalties for the compliant employers in the MEP.
2. **Safe Harbor 401(k) Plans and Timing of Plan Amendments and Adoptions** – The SECURE Act very generally permits employers to add a safe harbor feature to their existing 401(k) plans during the year; such additions are even permitted very late in the year and after the end of the year if the employer contributes at least 4 percent of employees' pay instead of the regular 3 percent. It also allows employers to adopt a plan for a taxable year as long as the plan is adopted by the due date for the employer's tax return for that year (including extensions).
3. **Startup Credit for Small Employer Plans and New Credit for Small Employer Plans Adopting Automatic Enrollment** – The SECURE Act increases the business tax credit for plan startup costs to make setting up retirement plans more affordable for small businesses. The tax credit will increase from the current cap of $500 to up to $5,000 in certain circumstances. It also encourages small-business owners to adopt automatic enrollment by providing a further $500 tax credit for three years for plans that add auto-enrollment.
4. **Post-70½ IRA Contributions** – The prohibition on making deductible contributions to a traditional IRA after age 70½ is repealed.
5. **Long-Term Part-Time Employees** – The SECURE Act requires employers to include long-term part-time workers as participants in defined-contribution plans except in the case of collectively bargained plans. Eligible employees will have completed at least 500 hours of service each year for three consecutive years, and are age 21 or older. However, these participants can be excluded from employer contributions, nondiscrimination and top-heavy requirements. Previously, part-time workers could be excluded if they haven't worked 1,000 hours in a 12-month eligibility period.
6. **Plan Withdrawals for Birth or Adoption** – The SECURE Act allows an exception to the 10 percent penalty for birth or adoption. New parents can now withdraw up to $5,000 from a retirement account within a year of a child's birth or adoption without the 10 percent penalty those younger than 591/2 would normally owe. The distribution, which is still subject to tax, can be repaid to a retirement account.
7. **Increased Required Beginning Date** – The SECURE Act increases the age triggering the required beginning date for plans and IRAs to 72.
8. **Consolidated Form 5500 Reporting for Similar Plans** – The SECURE Act offers a consolidated Form 5500 for certain defined-contribution plans with a common plan administrator to reduce administrative costs, but also increases penalties for failure to file retirement plan returns, such as Forms 5500, required notifications of registration changes and required withholding notices.
9. **Fiduciary Safe Harbor for Selecting Annuity Providers** – The SECURE Act creates a safe harbor that employers can use when choosing an annuity provider to provide annuity distributions under a defined-contribution plan.
10. **"Stretch" RMD** – The SECURE Act imposes a 10-year distribution limit for most non-spouse beneficiaries to spend down inherited IRAs and defined-contribution plans. Before passage of the Act, withdrawals from inherited accounts could be stretched over the life of beneficiaries to mitigate taxes.

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CC-45142-1219 Tracking #1-932339 (Exp. 01/22)

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