

Chapman Client Alert

January 8, 2020

Current Issues Relevant to Our Clients

SECURE Act's Impact on Qualified Retirement Plans

Late in 2019, as part of a spending package, President Trump signed into law the Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act"). The legislation provides changes to defined contribution plans (such as 401(k) plans) and defined benefit pension plans. It also includes provisions related to individual retirement accounts (IRAs) and 529 plans (for a summary of the impact on IRAs and 529 plans, see our January 7 Client Alert, "[How the SECURE Act Will Impact Your IRA and 529 Plan](#)").

The key provisions of the SECURE Act that apply to qualified retirement plans include the following:

Multiple Employer Plans

The SECURE Act includes certain provisions related to multiple employer plans ("MEPs") (referred to in the SECURE Act as "pooled employer plans"). MEPs generally are defined contribution plans jointly sponsored by more than one employer. MEPs allow smaller employers to pool together to participate in a single plan and reduce administrative costs and negotiate lower fees. Among other things, the SECURE Act makes MEPs more attractive by eliminating the rule under which the entire plan will be disqualified for all employers even though a failure was caused by only one employer. The MEP provisions are effective for plan years beginning after December 31, 2020 giving the Internal Revenue Service and the Department of Labor time to provide guidance with respect to such plans.

Increase in Age for Required Minimum Distributions

The SECURE Act increases the age at which participants are generally required to begin taking mandatory distributions from their retirement plan from age 70 1/2 to age 72.

Modification to Required Minimum Distribution Rules

Prior to the SECURE Act, individuals in a defined contribution plan (and an inherited IRA) could generally take their required minimum distributions over their expected lifetime. The SECURE Act modifies the required minimum distribution rules with respect to contribution plans (and inherited IRAs) upon the death of the account owner. Generally, individuals (other than

the surviving spouse, disabled or chronically ill individuals, individuals who are not more than 10 years younger than the employee, or a child of the employee who has not reached the age of majority) are required to receive distributions by the end of the tenth calendar year following the employee's death.

Change to In-Service Withdrawal Age for Defined Benefit Pension Plans

While not technically part of the SECURE Act, the earliest age for which in-service withdrawals may be taken from a defined benefit pension plan was lowered as part of the spending bill. Effective for plan years beginning after December 31, 2019, defined benefit pension plans may offer in-service withdrawals as early as age 59 1/2 (instead of 62).

Lifetime Income Options

In order to encourage the use of annuity investment options in defined contribution plans, the SECURE Act provides an optional safe harbor on which employers may rely to satisfy ERISA's prudence requirement when selecting an insurer to provide a group annuity/lifetime income investment. Different than the safe harbor in the Department of Labor's 2008 regulation, the new safe harbor permits, among other things, a plan fiduciary to satisfy its ERISA fiduciary obligation by obtaining certain representations from the insurer about its financial capability. The plan fiduciary must still on its own determine that the annuity's costs and fees are reasonable and must perform thorough diligence in selecting an insurer.

The SECURE Act also increases the portability of annuities by allowing certain transfers and distributions of annuities to avoid some of the penalties, surrender fees, and charges associated with the liquidation of an annuity investment.

Lifetime Income Disclosure

The SECURE Act requires that benefit statements provided to plan participants must include a disclosure of the monthly payment that a participant could receive if an annuity (single life and joint and survivor) was purchased. This disclosure must be provided at least once during any 12-month period regardless of whether an annuity distribution is permitted under the plan. The Act directs the Department of Labor to develop a model disclosure.

401(k) Auto Enrollment Safe Harbor Plan

The Internal Revenue Code provides that if a plan satisfies certain safe harbors, the plan will be treated as satisfying the Code's nondiscrimination requirements. The SECURE Act generally increases from 10% to 15% the cap for plans that rely on the automatic enrollment safe harbor (known as qualified automatic contribution arrangements, or QACAs).

Under the Act, employers that rely on the "non-elective contribution safe harbor" (employers are required to provide employer contributions of at least 3% of an employee's compensation regardless of whether an employee makes salary deferrals) will have more flexibility to add non-elective safe harbor contributions after the plan year has commenced. The SECURE Act allows plan sponsors to retroactively amend their 401(k) plan to become a non-elective safe harbor plan if certain timing requirements or increased minimum non-elective contributions are satisfied.

Part-Time Workers' Participation in 401(k) Plans

Under existing law, qualified retirement plans may exclude part-time employees from participation if they work less than 1,000 hours. The SECURE Act requires that 401(k) plans have at least a dual eligibility requirement under which an employee must complete either one year of service (1,000 hour rule) or three consecutive years where the employee completes at least 500 hours of service.

Penalty-Free Withdrawals in the Case of Birth or Adoption

Under the SECURE Act, defined contributions plans may permit penalty-free withdrawals for up to \$5,000 for certain expenses related to the birth or adoption of a child.

Small Employer Pension Start-Up Cost Credit

To encourage the adoption of tax-qualified plans, the SECURE Act changes the \$500 credit for plan start-up costs that is

provided to certain small businesses (up to 100 employees) to the greater of (1) \$500 or (2) the lesser of (a) \$250 multiplied by the number of nonhighly compensated employees of the eligible employer who are eligible to participate in the plan or (b) \$5,000.

Small Employer Automatic Enrollment Credit

The SECURE Act creates a new tax credit of up to \$500 per year for three years to employers of 401(k) plans and SIMPE IRAs that adopt automatic enrollment provisions.

Form 5500 Changes

The SECURE Act permits defined contribution plans that have the same trustee, have the same named fiduciary under ERISA, have the same administrator, use the same plan year and provide the same investment options to participants to file a consolidated Form 5500 for the group of similar plans.

Penalties for filing certain forms late are increased. The late filing penalty, for example, for filing Form 5500s late is increased to \$250 per day and capped at \$150,000 (from the \$25 per day with a \$15,000 cap).

Plans Adopted by Tax Filing Date May be Treated as in Effect as of End of Year

The long-standing rule that a plan must be adopted by the last day of the plan year has been modified. Under the SECURE Act, qualified retirement plans adopted before the due date (including extensions) for the tax return for the taxable year will be treated as having been adopted on the last day of the plan year.

"Soft" Frozen Defined Benefit Pension Plans

The SECURE Act modifies some of the nondiscrimination rules with respect to closed or "soft" frozen defined benefit pension plans (*i.e.*, plans that do not allow for any new participants after a specified date).

Plan Amendments

In general, the SECURE Act provides for an extended remedial amendment period (*i.e.*, the plan must comply with the SECURE Act in operation but need not be amended) until the last day of the first plan year beginning on or after January 1, 2022. The deadline to amend governmental and collectively bargained plans is no later than the first plan year beginning on or after January 1, 2024.

Although, we anticipate that the Internal Revenue Service and the Department of Labor will issue guidance in the near future regarding some of the provisions in the SECURE Act, note that many of the Act's provisions are operationally effective for plan years beginning on or after December 31, 2019.

For More Information

If you would like further information concerning the matters discussed in this Client Alert, please contact Gary Polega or the Chapman attorney with whom you regularly work:

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