

Enactment of the SECURE Act: Effects and Implementation

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Overview

- Landmark legislation with many new opportunities for broadening coverage and increasing savings.
- Certain almost immediate effective dates will pose administrative challenges.
- Key provisions highlighted below.



Open Multiple Employer Plans (“MEPs”)

- Elimination of nexus requirement for MEPs. Effective for plan years beginning after 2020.
 - **Gig worker issue.**
- Issue: how can financial institutions sponsor an open MEP?
 - **Independent third party overseeing financial institution. Model exists today.**
 - **Employers oversee financial institution.**



Open MEPs

- No start-up credit for joining a MEP in effect for three years.
 - **Under current law, small employers (100 or fewer employees) receive credit equal to 50% of administrative costs, up to annual maximum of \$500 for three years. SECURE generally increases \$500 to \$5,000.**
 - **Disadvantage to MEP.**
- Alternative: cookie cutter single employer plans with single 5500 (under separate SECURE provision effective for 2022 plan year).
 - **Eligible for start-up credit.**
 - **Called a MEP by some.**
 - **No gig worker issue.**



MEPs

- Repeal of one bad apple rule. Effective for plan years beginning after 2020.
 - **Current proposed regulations can be modified to implement this repeal.**
- Alternative cookie cutter single employer plans: no one bad apple rule.
- Exclusion of 403(b) plans from open MEPs and repeal of one bad apple rule: to be addressed later?



Closed Plan Nondiscrimination Reform

- Issues Addressed:
 - **Closed plan**
 - **Closed benefit right or feature**
 - **DC plan make-whole contributions**
 - **Minimum participation**



Closed Plan

- If special rule is satisfied, permitted to aggregate DB plan with DC plan and test on a benefits basis
- Not deemed compliance



Closed Plan

- Special rule requirements:
 - **Closed class before 4/5/17 or meet “plan size” rule**
 - **Satisfy 401(a)(4) and 410(b) for year of closing and next two years**
 - **No amendment that significantly discriminates**



Closed Plan

- Plan size rule:
 - **Plan in effect for five years**
 - **Neither coverage nor benefits increased by more than 50% during those five years.**
 - Disregard participants merged into plan
 - MEPs treated as single plan for this purpose



Closed Plan

- Demonstrating compliance with 401(a)(4) and 410(b) for purposes of qualifying for 3 years special rule
 - **Closing plan is not a significant change in coverage for purposes of business transaction transition rule.**
 - **Demographic changes attributable to transactions disregarded.**
 - **Plans with different plan years may be aggregated. This also applies for actual testing.**



Closed Plan

- If DB plan spun off, same rules continue to apply.



Closed Plan

- Actual testing: Aggregation permitted with matches (with electives), 403(b) matches (with electives) and nonelectives, and ESOPs, for purposes of testing DB benefits.



Closed BRF, Make-Whole, Minimum Participation

- Closed benefit right or feature: deemed compliance if plan satisfies special rules very similar to closed plan rules
- Make-whole contributions to DC plan: very similar to closed plan rules
- Minimum participation: deemed compliance for frozen or closed plans under very similar rules



Lifetime Income Portability

- Today, if employer discontinues an annuity investment available under a plan, employees lose the guarantees they have paid for.
- **SECURE:** allow employees to roll over amounts invested in annuity in this situation (or receive a distribution of annuity).
Effective for plan years beginning after 2019.



Annuity Provider Selection

Safe Harbor

- Present law: in order to offer an annuity under a plan, the plan fiduciary must analyze the financial strength of the insurer.
- SECURE: allow the plan fiduciary to rely on the insurer's representation that it is in compliance with state insurance laws. Effective on the date of enactment.



Lifetime income disclosure

- Require benefit statements to include annuity equivalents of account balance based on DOL assumptions.
 - **Fiduciary protection.**
- Questions regarding use of other tools or disclosures.



Increase in 70 ½ age for required minimum distributions

- Increase to 72 in 2020. Effective after 2019 for individuals who attain age 70½ after 2019.
 - **Age 70½ for qualified charitable distributions not affected.**
 - **Implementation challenges: as of 1/1/20 plan, distributions to individuals who attain 70½ in 2020 may be fully subject to the direct rollover rules, 20% withholding, and the 402(f) notice rules. Also, notices that RMDs are due for 2020 should not be sent to such individuals.**



Post-death acceleration of required minimum distributions

- Referred to as “stretch”.
- Present law: beneficiaries can take distributions over life expectancy.
- SECURE: designated beneficiaries must receive distributions within 10 years of death.
 - **Exception: life expectancy payout option preserved for spouses, beneficiaries not more than 10 years younger, disabled, chronically ill, and minors (until age of majority when 10-year rule applies).**
- Generally, for deaths after 2019, subject to delays for collectively bargained plans and governmental plans, and an exemption for qualified annuities that are a binding contract as of the date of enactment.



Part-time employees

- Present law: employers can require, as a condition of eligibility for a plan, 1,000 hours of service during a year.
- SECURE: in a 401(k) plan, plans must provide an alternative means of satisfying the service eligibility requirement: 500 hours for three consecutive years. For employees who become eligible by reason of this rule:
 - **No employer contributions required.**
 - **Can be excluded from testing and testing safe harbors**
- Effective for plan years beginning after 2020, but service during years beginning before 2021 is disregarded.



Withdrawal or birth or adoption of a child

- Upon birth or adoption of a child, a participant may withdraw up to \$5,000 penalty-free from a DC plan or IRA. Optional plan provision, but see below. Effective for distributions after 2019.
- Distribution may be repaid (treated like a rollover).



Withdrawal or birth or adoption of a child

- Implementation challenges: It appears, though not clearly, that a regular distribution, like a post-termination of employment distribution, may qualify as a birth or adoption distribution if it is made upon a birth or adoption. Birth or adoption distributions are not subject to the direct rollover rules, the 402(f) notices rules, or the 20% withholding rules. This new exception to the pre-59½ penalty tax also requires a change to 402(f) notices generally.



Cap on Safe Harbor Deferrals

- Increase in safe harbor 10% cap on automatic deferrals to 15% after first year. Effective for plan years beginning after 2019.
 - **Implementation challenge if a plan incorporates the cap by reference to the law.**



Phased Retirement

- Pension plans and governmental 457(b) plans may make in-service distributions at 59½. (Separate from SECURE.) Effective for plan years beginning after 2019.



Other SECURE Act Provisions to Note

- Permitting post-70½ contributions to deductible IRAs. Corresponding change to reduce excludable IRA charitable distributions by post-70½ contributions. Effective for taxable years beginning after 2019.
- Small employers (100 or fewer employees) get \$500 per year credit for three years for adding automatic enrollment. Effective for tax years beginning after 2019.



Other SECURE Act Provisions to Note

- Remedial amendment period. Generally, plan amendments not required until 2022.
- Church plan clarification.
- CSEC premium reform.
- Elimination of safe harbor notice for nonelective plans.

