SECURE Act – Key Provisions Affecting Qualified Plan Distributions

2020 Midyear Tax Meeting
Distributions Subcommittee
January 31, 2020
Background

• H.R. 1865: Further Consolidated Appropriations Act of 2020
• Division O contains the Setting Every Community Up for Retirement Enhancement Act ("SECURE Act")
• Signed into law on December 20, 2019
• Some similarities with prior bills, including the Retirement Enhancement and Savings Act ("RESA"), and the Family Savings Act ("FSA")
Lifetime Income Disclosure

• SECURE Act § 203
• DC plan participants and beneficiaries must receive an estimate of the monthly annuity income their account could produce in retirement.
• Must be shown in the form of a QJSA and a SLA.
• Must be provided once every 12 months on pension benefit statements.
Lifetime Income Disclosure (cont’d)

• DOL must issue lifetime income disclosure rules, including a model lifetime income disclosure, no later than 12/20/2020.
• By the same date, DOL must prescribe assumptions for converting account balances into lifetime income streams.
• No liability for providing this disclosure pursuant to DOL guidance and assumptions.
• Effective for benefit statements furnished more than 12 months after the latest of the DOL’s publication of an interim final rule, model disclosure, or assumptions.
Fiduciary Safe Harbor for Lifetime Income Provider

• SECURE Act § 204

• In 2008, DOL issued a safe harbor for DC plan fiduciaries selecting an annuity provider.

• New law provides a more robust safe harbor for the selection of DC annuity providers.

• Fiduciary can satisfy safe harbor by obtaining specific written representations from insurer.

• No requirement to select the lowest cost.
Portability of Lifetime Income Options

• SECURE Act § 109
• Prior law did not allow in-service distributions where lifetime income investment is no longer offered under a plan.
• New law permits direct trustee-to-trustee transfers (or transfer of annuity contract) of lifetime income investment to another eligible retirement plan or IRA, where the investment is no longer offered under the plan.
• Effective for plan years beginning after 12/31/2019.
Treatment of Custodial Accounts on Termination of 403(b) Plans

• SECURE Act § 110

• Directs IRS/Treasury to issue guidance to provide for in-kind distribution of custodial accounts on termination of a 403(b) plan.

• Distributed custodial account will be maintained on a tax-deferred basis until amounts are actually paid, subject to 403(b) requirements in effect at the time of distribution.

• Guidance must be issued by 6/20/2020, and will be effective for years beginning after 12/31/2008.
Childbirth or Adoption Withdrawals

- SECURE Act § 113
- Allows distributions of up to $5,000 for expenses related to the birth or adoption of a child (other than the spouse’s child) for up to 1 year.
- 10% additional tax under Code section 72(t) does not apply.
- Not an eligible rollover distribution, and participant may recontribute the amount distributed to an applicable eligible retirement plan or IRA.
- Effective for distributions made after December 31, 2019.
Required Beginning Date for RMDs

• SECURE Act § 114
• Required beginning date for required minimum distributions (RMDs) is changed from 70-1/2 to 72.
• Effective for RMDs after 12/31/2019, for those who attain age 70-1/2 after 12/31/2019.
• Those who attained age 70-1/2 in 2019 must still take RMDs in April 2020.
Post-Death RMD Rules

• SECURE Act § 401

• New law modifies post-death distribution rules for certain DC plan beneficiaries.

• In general, post-death distributions must be completed in 10 years.

• Exception for eligible designated beneficiaries:
  • Surviving spouse
  • Disabled or chronically ill individual (or certain trusts)
  • Beneficiary no more than 10 years younger than participant
  • Minor child of the participant (until majority)
Post-Death RMD Rules (cont’d)

• If eligible designated beneficiary dies, benefit must be distributed in 10 years.
• Applies to distributions on participant’s death after 12/31/2019.
• Effective for deaths after 12/31/2021 for governmental plans and certain plans maintained pursuant to 1 or more collective bargaining agreements.
Remedial Amendment Period for SECURE Act Provisions

• SECURE Act § 601
• Provides anti-cutback relief for SECURE Act plan amendments if the amendment is adopted by the last day of the first plan year beginning on or after 1/1/2022, plan is operated as if amendment were in effect, and amendment applies retroactively.
• For collectively bargained and governmental plans, deadline is extended until first plan year beginning on or after 1/1/2024.
Minimum Age for In-Service Distributions

• Part of Bipartisan American Miners Act.
• New law permits in-service distributions from defined benefit plans on or after age 59-1/2.
• Applicable to plan years beginning after 12/31/2019.
Disaster Relief Loans and Distributions

• New law (not part of SECURE Act) provides disaster relief similar to that provided for hurricanes Katrina, Maria, etc. for post-2017 disasters.

• N/A to California wildfires for which relief has already been provided.

• Permits loans and temporary withdrawals of up to $100,000, which may be made through June 17, 2020.

• Effective 12/20/2019, applies to losses incurred due to federally-declared disasters from 1/1/2018 – 2/18/2020.

• If offered, plan amendment required by 12/31/2020 (for calendar year plans).