

# CLIENT ALERTS

## End of Year Legislation Creates Significant Retirement Plan Changes

1.2.2020

On December 20, 2019, the President signed into law numerous changes to key Internal Revenue Code ("Code") and Employee Retirement Income Security Act of 1974 ("ERISA") provisions concerning retirement plans. Specifically, while the Further Consolidated Appropriations Act, 2020 primarily funds the Federal government through September 30, 2020, the legislative package includes a division titled the Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act") focusing on retirement plan changes.

Critically, many of the changes implemented by the SECURE Act take effect either immediately or as of the first plan year beginning after December 31, 2019. As a result, plan sponsors and administrators should be aware of the impacts as soon as possible, even if plan document amendments are generally not required pursuant to the SECURE Act until 2022.

Important changes to the Code and ERISA implemented by the SECURE Act impacting retirement plans include (but are not limited to):

- **Qualified Cash or Deferred Arrangement Must Allow Long-Term Employees Working More than 500 but Less than 1,000 Hours Per Year to Participate.** 401(k) plans (except for collectively bargained employees) must permit employees that complete three consecutive 12-month periods with at least 500 hours of service to participate. However, employers may elect to exclude such employees from nondiscrimination, coverage, and top heavy testing. These rules take effect for plan years beginning after December 31, 2020.
- **Increase in Age for Required Beginning Date for Mandatory Distributions.** The age at which benefit distributions must begin is increased from age 70 ½ to age 72, effective for individuals who attain age 70 ½ after December 31, 2019.

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- **Modification of Required Distribution Rules for Designated Beneficiaries.** Defined contribution plans must distribute all balances by the end of 10 years following the death of the employee, except for balances payable to “eligible designated beneficiaries” (e.g., a surviving spouse, a child, a disabled or chronically ill individual, or an individual who is not more than 10 years younger than the employee). This rule takes effect for distributions with respect to employees who die after December 31, 2019, subject to certain nuanced exceptions.
- **Multiple Employer Plans; Pooled Employer Plans.** Two or more employers may adopt a defined contribution plan, either by having a common interest or by having a pooled plan provider. This rule takes effect for plan years beginning after December 31, 2020.
- **Increase in 10 Percent Cap for Automatic Enrollment Safe Harbor after 1<sup>st</sup> Plan Year.** The automatic escalation cap is increased from 10% to 15% for any “qualified automatic contribution arrangement” that may be offered by a 401(k) plan. Such plan sponsors have the option of increasing their applicable cap for plan years beginning after December 31, 2019.
- **Disclosure regarding Lifetime Income.** Defined contribution plans must include in the annual benefit statement a lifetime income disclosure setting forth a lifetime income stream equivalent of the total accrued benefit of the account. This mandate will not take effect until the Department of Labor issues further guidance (including a model disclosure and assumptions for plan administrators to use in order to convert total accrued benefits to a lifetime income stream).
- **Qualified Employer Plans Prohibited from Making Loans through Credit Cards and Other Similar Arrangements.** Effective for loans made after December 20, 2019, qualified retirement plans may not make a loan through a credit card or other similar arrangement.
- **Portability of Lifetime Income Options.** A defined contribution plan may distribute lifetime income investments on or after the date that is 90 days prior to the date on which the lifetime income investment is no longer authorized to be held as an investment under the plan. This rule takes effect for plan years beginning after December 31, 2019.
- **Fiduciary Safe Harbor for Selection of Lifetime Income Provider.** Fiduciaries now have a safe harbor from any losses which that may result due to an insurer’s inability to satisfy its financial obligations under the terms of a contract, so long as certain diligence requirements are satisfied during the selection process of the contract.
- **Penalty-Free Withdrawals from Retirement Plans for Individuals in Case of Birth or Adoption.** A participant may receive a distribution from a qualified retirement plan (other than a defined benefit plan) on account of a qualified birth or adoption within one year of the event, provided the distribution is not in excess of \$5,000 when aggregating distributions from all plans maintained by the employer (and any member of any controlled group which includes the employer). Additionally, such distributions will not be subject to the 10% tax on early withdrawals. This rule takes effect for distributions made after December 31, 2019.

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- **Combined Annual Report for Group of Plans.** The IRS and DOL are directed to permit the consolidated filing of defined contribution plan annual returns, provided all applicable plans included in the filing have the same trustee, the same named fiduciary, the same plan administrator, the same plan year, and provide the same investments. Such consolidated returns will be implemented no later than January 1, 2022 and shall apply to returns and reports for plan years beginning after December 31, 2021.
- **Increased Penalties for Failure to File Retirement Plan Returns.** Numerous reporting penalties are increased: (i) the penalty for failing to file a Form 5500 is increased to \$250 per day (while also increasing the cap to \$150,000); (ii) the penalty for failing to file a Form 8955-SSA is increased to \$10 per participant per day (while increasing the cap to \$50,000 for failing to file); (iii) the penalty for failing to file a change of status with respect to a Form 8955-SSA is increased to \$10 per participant per day (while increasing the cap to \$10,000 for failing to file); and (iv) the penalty for failing to provide a withholding notice is increased to \$100 per failure (while increasing the cap to \$50,000).

While not part of the "SECURE Act" per se, the Further Consolidated Appropriations Act, 2020 also included two additional provisions that impact retirement plans:

- For plan years beginning after December 31, 2019, pension plans and 457(b) eligible deferred compensation plans for governmental employers are permitted to make in-service distributions to participants starting at age 59 ½.
- The Code permits a waiver from the 10-percent tax on early withdrawals for distributions up to \$100,000 in the aggregate relating to a FEMA-declared disaster from January 1, 2018 through February 18, 2020.

The changes listed in this summary do not include every change implemented by the SECURE Act, but do highlight several key changes emphasizing the impact of the SECURE Act on retirement plan design and administration. If you would like more information on the overall scope of the SECURE Act, or if you have questions concerning the specific impact of the SECURE Act on your company's retirement plan, please reach out to your Butzel Long benefits attorney as soon as possible.

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