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The SECURE Act

On December 20, 2019, the Setting Every Community Up for **Retirement Enhancement Act of 2019 (SECURE Act)** was signed into law. Both the U.S. Senate and the House of Representatives overwhelmingly approved this important legislation with bipartisan support. Most provisions in the law went into effect on January 1, 2020; however, plans that are affected by the amendments required under this law will generally have until the first Plan Year beginning on or after January 1, 2022, or later if the Secretary of Treasury decides to extend this date.

In short, the SECURE Act will enhance the ability of Americans to save for retirement, provide new guidance to sponsors for the management of plans, and give employers better options to provide programs to employees who previously did not have retirement plan opportunities.

The SECURE Act is considered significant retirement security legislation because of a host of dynamic changes it puts forth and the ways they impact sponsors, employees, small businesses, and others.

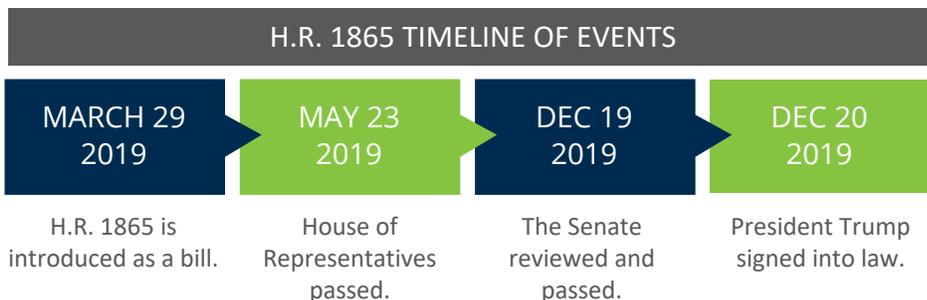
With PenServ as your TPA, you can trust us to ensure that your plans and related activities are fully compliant with the SECURE Act and other applicable laws, and that you and your employees are realizing the best and most secure value for your investments.

This Newsletter will summarize some of the key elements of the SECURE Act, and how they may have an impact on you. Please contact your Plan Manager with any questions or for additional information.



[READ THE SECURE ACT](#)
[CLICK HERE](#)

H.R. 1865 TIMELINE OF EVENTS



Sponsor Impact

The following provisions may have an impact to the Plan Sponsor/Employer of certain Defined Contribution (DC) retirement plans:

- **Plan Adopted by Filing Due Date for Year may be Treated as in Effect as of Close of Year**
 - Previously, new plans had to have been adopted prior to the close of the tax year (for calendar years, by December 31st). Under the new law, if an employer adopts a new plan prior to the due date of their tax return (including extensions), they may treat the Plan as having been adopted as of the last day of the tax year.
 - Effective for taxable years starting after December 31, 2019

- **Rules Relating to Election of Safe Harbor 401(k) Status**
 - Plan Amendments for Non-Elective (3%) Safe Harbor Plans may now occur at any time before the 30th day prior to the Plan Year-End (for calendar year Plans, November 30th); or prior to the Plan Year-End if a 4% Non-Elective contribution is made instead.
 - The Safe Harbor Notice requirement has been removed for Non-Elective (3%) Safe Harbor Plans.
 - Effective for Plan Years beginning after December 31, 2019

- **Increase in 10 percent cap for Automatic Enrollment Safe Harbor after 1st Plan Year.**
 - The maximum percentage of compensation deferred in auto enroll and auto escalate plans has been increased from 10% to 15%.
 - Effective for Plan Years beginning after December 31, 2019

- **Fiduciary Safe Harbor for Selection of Lifetime Income Provider**
 - This section provides a safe harbor for fiduciaries to satisfy the prudence requirement in regard to the selection of guaranteed retirement income contracts. Additionally, a fiduciary shall not be liable for losses that result due to an insurer's inability to satisfy obligations if these safe harbor requirements are met.
 - No effective date listed

- **Increased Penalties for Failure to File Retirement Plan Returns**
 - The penalty for failure to file a retirement plan return (Form 5500) is increased to \$250 for each day past the filing deadline, up to a maximum of \$150,000. This is 10 times the original fee.
 - The penalty for failure to give the withholding notices to recipients of certain distributions has been increased to \$100 for each failure, up to a maximum of \$50,000. Again, a significant increase.
 - Effective for returns, statements, and notifications required to be filed or provided after December 31, 2019

- **Treatment of Custodial Accounts on Termination of Section 403(b) Plans**
 - If an employer terminates a 403(b) Plan, the custodian may distribute the account, in-kind, to a Participant or Beneficiary. This account shall be maintained on a tax-deferred basis as a 403(b) custodial account until it is paid out. Further guidance on this Section is still pending.
 - Effective retroactively for taxable years starting after December 31, 2008.

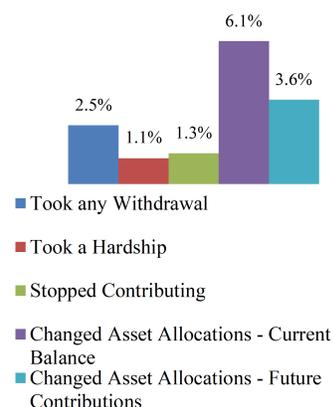
- **Clarification of Retirement Income Account Rules Relating to Church-Controlled Organizations**
 - This provision clarifies which individuals may be covered by plans maintained by church-controlled organizations.
 - Effective retroactively to all Plan Years

In 2019, seventy-seven percent (77%) of private-industry employees who had access to a retirement plan through their employer participated in such plans.

U.S. Bureau of Labor Statistics

According to research done by the Investment Company Institute, only 1.3% of employees participating in a DC plan stopped contributing in the first half of 2019.

Investment Company Institute



Participant Impact

The following provisions will affect participants in employer-sponsored retirement plans, as well as IRA account holders:

- **Repeal of Maximum Age for Traditional IRA Contributions**
 - Individuals will be able to make contributions to their IRA even after attaining the age of 70 ½, as long as income is earned.
 - Effective for taxable years beginning after December 31, 2019
- **Increase in Age for Required Beginning Date for Mandatory Distributions**
 - The required beginning date for mandatory distributions has been amended from age 70 ½ to age 72.
 - This only applies to persons turning 70 ½ after December 31, 2019. Anyone who turned 70 ½ prior must begin taking, and continue to take, distributions.
- **Modification of Required Distribution Rules for Designated Beneficiaries**
 - Upon the death of an employee or IRA account owner, distributions of the entire account balance to anyone other than an “eligible designated beneficiary” must be made within 10 years of the account owner’s death.
 - An eligible designated beneficiary includes the surviving spouse, a child of the employee who has not yet reached the age of majority (age 18 for most states), a disabled individual, a chronically ill individual, or an individual who is not more than 10 years younger than the decedent.
 - This change eliminates the ability to have “Stretch IRAs” by limiting the distribution period for beneficiaries. The hope is that taxes generated from these distributions will help fund some of the other changes found in the SECURE Act (such as the delayed Required Beginning Date).
 - Generally effective for distributions for employees or account owners who die after December 31, 2019. Certain exceptions apply.
- **Qualified Cash or Deferred Arrangements Must Allow Long-Term Employees Working More Than 500 but Less Than 1,000 hours per Year to Participate**
 - Many Plans require employees to work 1,000 Hours during a 12-month period in order to become eligible for the Plan, which is the maximum service requirement permitted. Now, in addition to this service requirement, if an individual works at least 500 hours during a 12-month period, for three consecutive years, he or she may become eligible for the Plan.
 - This applies to employee deferrals only; the employer is not required to contribute to these Participants, nor would these Participants be included in the annual compliance testing. Vesting will apply to each 12-month period that the employee works at least 500 hours. Once the employee reaches the 1,000 requirement, they will be subject to normal compliance requirements.
 - Effective for Plan Years beginning after December 31, 2019
- **Penalty-Free Withdrawals from Retirement Plans for Individuals in Case of Birth of Child or Adoption**
 - Distributions from a retirement plan, in the case of a qualified birth or adoption, are exempt from the 10% early withdrawal penalty.
 - The child must be under 18 years of age, the distribution must be made within the 1-year period after the birth or adoption date of the child, and the distribution exception is capped at \$5,000 per parent.
 - These funds may be repaid to the Plan by a rollover, and the repayment would be treated as a nontaxable direct rollover.
 - Effective for distributions made after December 31, 2019

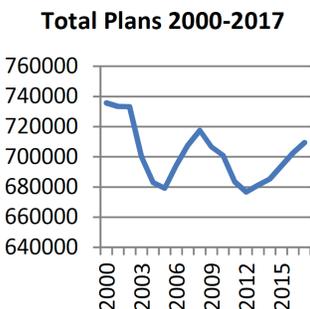
417 to 3

The SECURE Act (H.R. 1994) was originally passed by the House with 417 Yeas and 3 Nays! It was later added to H.R. 1865 with a multitude of other bills and signed into law by President Trump after some amendments and revisions by both the House and Senate.

Did You Know?

According to a bulletin published by the Department of Labor in 2019, there were as many as 709,527 retirement plans in the U.S. as of 2017, with the highest number occurring in 2000 at 735,651 plans.

Employee Benefits Security Administration, U.S DOL



DATES TO REMEMBER

Please keep these key dates in mind throughout the year (for Calendar Year Businesses and Plans):

March 16, 2020

Filing deadline for Partnership and S-Corp Returns

April 1, 2020

Deadline to take 2019 RMD for those who turned 70 ½ or retired in 2019

April 15, 2020

Filing deadline for Corporate Returns

July 31, 2020

Filing deadline for Form 5500

September 15, 2020

Extended filing deadline for Partnership and S-Corp Returns

October 15, 2020

Extended filing deadline for Form 5500 Extended filing deadline for Corporate Returns

December 31, 2020

Deadline to take 2020 RMD for those who turned 70 ½ or retired prior to 2019

Employer Contributions MUST be made prior to your tax filing due date.

Small Business Impact & Group Plans

In addition to the above provisions, the following should help Small Businesses in offering retirement plans to their employees:

- **Increase in Credit Limitation for Small Employer Pension Plan Startup Costs**
 - Tax Credits! Startup costs for a new Plan can be overwhelming, especially for small businesses. To incentivize employers to establish Plans and encourage employees to save, the tax credit has been increased from \$500 to the greater of:
 1. \$500, or
 2. The lesser of:
 - a. \$250 for each NHCE (Non-Highly Compensated Employee) eligible to participate, or
 - b. \$5,000
 - Effective for taxable years beginning after December 31, 2019
This credit is limited to half of the startup costs incurred by the employer.
- **Small Employer Automatic Enrollment Tax**
 - In addition to the above credit, an additional \$500 credit is available for plans that setup an eligible automatic contribution arrangement, for the first year and the two years following setup.
 - Effective for taxable years beginning after December 31, 2019
- **Multiple Employer Plans; Pooled Employer Plans.**
 - Previously, in order to qualify for a Multiple Employer Plan (“MEP”), the adopting organizations had to be related in some manner, e.g. occupation or geographic region. Now, two or more unrelated employers may join under an Open MEP. This allows some economies of scale in regard to fees – since only one Plan is being administered and one Form 5500 is filed, the fees associated with these services may be spread across the adopting employers.
 - However, there is a trade-off in that employers adopting the Plan will have less flexibility in making any changes or customizing provisions to fit their needs. The adopted Plan will have the same provisions for all employers.
 - Effective for Plan Years beginning after December 31, 2020
- **Combined Annual Report for Group of Plans**
 - This section directs the DOL and IRS to establish a consolidated tax return for certain similar plans. To qualify for consolidation, these plans must meet certain requirements.
 - Implemented no later than January 1, 2022 for Plan Years after December 31, 2021.

Closing Remarks

In addition to the above, there are several more provisions included in the SECURE Act, including the ability to consolidate annual reports for certain DC plans, expansion of qualified higher education expenses for Section 529 plans, the requirement for lifetime income disclosures on annual statements, and the removal of the ability to take loans from plans in the form of a credit card. This e-Newsletter is only meant to provide some material modifications made by the new law, and to help illustrate how these changes may affect your Plan.

We hope you’ve found this information to be useful, and encourage you to reach out to your Plan Manager with any questions you may have. Thank you for your business!



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