



Saalfeld Griggs ^{PC}

SECURE & CARES Acts:
Sweeping Changes to Retirement Plans

Randy Cook and Christine Moehl, Employee Benefits Attorneys

Agenda

- Setting Every Community Up for Retirement Enhancement (SECURE) Act
 - Provisions Affecting 401(k) Plans
 - Provisions Affecting Non-401(k)s
 - Pooled Employer Plans (PEPs)
- Coronavirus Aid, Relief, and Economic Security (CARES) Act

SECURE Act: RMD Age Increased

- Old Rule

- Distributions from qualified plans and IRAs must commence by April 1 of the calendar year following the year in which the individual turns age 70-1/2 (or retires, if later and not a 5% owner)

- New Rule

- Age 70-1/2 is replaced with age 72

- Effective Date

- Applies to anyone born after July 1, 1949

SECURE Act: Death RMDs Accelerated

- Old Rule
 - Distributions must be paid out following the death of the participant, generally over the beneficiary's life expectancy
- New Rule
 - DC Plans and IRAs: Distributions after death of the participant generally must be made by the end of the 10th calendar year following the year of death
 - Exceptions:
 - Surviving spouse of the original owner
 - Disabled or chronically ill individual (or trust for the same)
 - Beneficiary no more than 10 years younger than participant, or
 - Minor child of participant (until reaches age of majority)
- Effective Date
 - Deaths after December 31, 2019

SECURE Act: Changes to Safe Harbor 401(k) Plans – Qualified Automatic Enrollment Arrangement (“QACA”)

- Old Rule
 - The limit on the maximum deferral rate for a QACA is 10%
- New Rule
 - The new limit is generally 15% except for the participant’s first year, which remains at 10%
 - The minimum threshold of 3% to 6% (depending on the participation year) are unchanged

Year	Minimum Auto Enroll %	Maximum Auto Enroll %
1	3%	10%
2	4%	15%
3	5%	15%
4	6%	15%

SECURE Act: Changes to Nonelective Safe Harbor 401(k) Plans

- Old Rule
 - Required an annual Nonelective Safe Harbor notice 30 days before the plan year began
 - Special rule permitted “Maybe” Safe Harbor notice that gave plan sponsor the ability to amend into Safe Harbor status 30 days before the plan year ended
- New Rule
 - No participant notice required for Nonelective Safe Harbor plans (unlike Matching Safe Harbor plans, which still require a notice 30 days before plan year begins)
 - Nonelective Safe Harbor status can be adopted via a plan amendment:
 1. 30 days before the close of the plan year if making a 3% nonelective contribution; or
 2. By the end of the following plan year if making at least a 4% nonelective contribution year

SECURE Act: Qualified Birth or Adoption Distributions (“QBOADS”)

- New Rule:
 - Withdrawals of up to \$5,000 for birth or adoption expenses, even if no other distributable event
 - Each parent can take a QBOAD for each child born or adopted during the year
 - QBOAD must occur within one year of the birth or finalization of adoption
 - Distributions are not subject to the 10% early withdrawal penalty tax
 - Amounts withdrawn may be recontributed to the plan as a rollover contribution*
 - Employers are NOT required to add QBOADS to their plans, but if they do, they are required to allow participants to recontribute the QBOAD

SECURE Act: Increased Filing Penalties (for late filings after 12/31/19)

Filing/Notice	Old Penalty	New Penalty
Form 5310-A	\$25/day (max \$15,000)	\$250/day (max \$150,000)
Form 5500	IRS: \$25/day (max \$15,000) DOL: as much as \$2,200/day	IRS: \$250/day (max \$150,000) DOL: no change
Form 8955-SSA (per day per participant)	\$1/day (max \$5,000)	\$10/day (max \$50,000)
Changes to info on 8955-SSA (per day per participant)	\$1/day (max \$1,000)	\$10/day (max \$10,000)
Notice of withholding election (for distributions subject to withholdings)	\$10/day (max \$5,000)	\$100/day (max \$50,000)

SECURE Act: Retirement Plan Credit Card Loans

- Old Rule
 - No prohibition on tying “micro” participant retirement plan loans to credit cards or other similar arrangements
- New Rule
 - Creates a prohibition on participant loans from retirement plans made through credit cards or other similar arrangements

SECURE Act: Small Employer Start-Up Tax Credit

- Old Rule
 - \$500 per year tax credit for costs of adoption and maintenance of qualified plan for the first three years
- New Rule
 - \$500 limit is increased to the greater of:
 - \$500 or lesser of:
 - \$250 per NHCE, or
 - \$5,000
 - For small employers only – no more than 100 employees who received at least \$5,000 in compensation in the prior year

SECURE Act: Small Employer Auto Enrollment Tax Credit

- New Rule
 - Tax credit of \$500 for up to three years for adopting automatic enrollment provisions
 - Applies to new or existing plans; also applies to SIMPLE IRAs
 - Only applicable if plan maintains the ACA for the entire year
 - Is in addition to regular start up tax credit
 - For small employers only – no more than 100 employees who received at least \$5,000 in compensation in the prior year

SECURE Act: Lifetime Income Changes

- Three Changes:
 1. Lifetime Income Disclosures (required)
 2. Fiduciary Safe Harbor for Selection of Lifetime Income Provider (optional)
 3. Portability of Lifetime Income Options (optional)

SECURE Act: Lifetime Income - Disclosures

- Old Rule
 - Section 105(a)(2) of ERISA establishes disclosure requirements for DC plan statements provided to participants (e.g., account balance and the value of each investment option held in the account)
- New Rule
 - The SECURE Act amends section 105(a)(2) to require that a DC plan statement include, at least once during a twelve-month period, a lifetime income disclosure that sets forth the “lifetime income stream equivalent” of the participant’s account balance
 - Effective 12 months after DOL issues regs relating to lifetime income conversation assumptions and model lifetime income disclosure (probably 2021 benefit statements)

SECURE Act: Lifetime Income – Safe Harbor

- Old Rule

- DOL issued an Annuity Selection Safe Harbor in 2008 in 29 C.F.R. §404a-4
 - Required fiduciary to assess and conclude that a selected annuity provider will be able to make “all future payments under the contract”
 - Nobody liked it

- New Rule

- The SECURE Act modifies the Safe Harbor by allowing the fiduciary to rely on the annuity provider’s self-certification regarding compliance with regulations and maintenance of sufficient reserves

SECURE Act: Lifetime Income – Portability

- Old Rule

- Code sections 401(a), 401(k)(2)(B), 403(b)(11), 403(b)(7)(A), and 457(d)(1)(A) made it difficult to move lifetime income products from one recordkeeper to another.

- New Rule:

- The SECURE Act amends the above Code sections to allow for the distribution of “lifetime income investment” that is a “qualified distribution” or the distribution of a “lifetime income investment” in the form of a “qualified plan distribution annuity contract”

SECURE Act: Retroactive Adoption of New Retirement Plans

- Old Rule
 - Qualified plans must be adopted by the last day of the employer's tax year to claim a deduction for that year
- New Rule
 - Qualified plans may be adopted by the due date for the employer's tax return (including extensions for the tax year it first applies to)
 - Still cannot accept deferrals until plan is actually adopted
 - No exception for DB funding rules

SECURE Act: Coverage of Long-Term, Part-Time Employees by 401(k) Plans

- Old Rule:
 - Employees working less than 1,000 hours per year could be excluded from ever participating in plan.
- New Rule:
 - 401(k) plans will be required to cover “long-time part-time” employee
 - “Long-term, part-time” = Three consecutive, 12-month periods with more than 500 hours of service (age must still be met)
 - Only required to allow the long-term, part-time employees to defer
 - Employer may elect to exclude for:
 - Coverage
 - Nondiscrimination
 - Top Heavy
 - If plan provides employer contributions to these employees, then a YOS for vesting is lowered from 1,000 hours to 500 hours
- Effective Date
 - Plan Years beginning after December 31, 2020
 - 12 month periods before January 1, 2021 not taken into account
 - 2024 will be first enrollment



SECURE Act: Combined 5500 Filings

- Old Rule
 - Under current law, each ERISA-covered retirement plan is required to file an annual Form 5500
- New Rule:
 - Multiple DC plans in a related group may file a single, consolidated Form 5500 for all plans in the related group.
 - “Related” is defined as DC plans with the same:
 - Trustee;
 - Plan administrator;
 - Plan year; and,
 - Investments or investment options
- Effective Date
 - Plan years beginning in 2022

SECURE Act: Max IRA Age Repealed

- Old Rule
 - Individuals over age 70-1/2 could not make tax-deductible IRA contributions
- New Rule
 - Removes the age 70-1/2 cap for making tax-deductible IRA contributions
- Effective Date
 - Tax years that begin after December 31, 2019

SECURE Act: In-Service Distributions

- Old Rule
 - Pension plans (DB and MPP plans) could only permit in-service distributions at age 62, and governmental 457(b) plans could only permit in-service distributions at age 70 ½
- New Rule
 - Pension plans and governmental 457(b) plans may permit in-service distributions at age 59 ½
 - Plan sponsors are not required to add this feature to their plans
 - Effective for plan years beginning after December 31, 2019

SECURE Act: 403(b) Plan Terminations

- Old Rule
 - To effectively terminate a 403(b) plan, the plan sponsor must distribute all assets to the plan participants
 - IRS did not issue regulations on how custodial accounts could be distributed
- New Rule
 - IRS is directed to issue guidance within 6 months that custodial accounts of terminating plan:
 - May be distributed in-kind to participant or beneficiary
 - May be treated as tax deferred until amounts are actually distributed from the accounts
- Effective Date
 - Retroactive to plan years beginning after December 31, 2008

SECURE Act: Pooled Employer Plans (“PEPs”)

- SECURE Act Section 101
 - New type of ERISA-covered plan
 - Addresses the “one bad apple” rule
 - Addresses need for “nexus” between employers
- Effective 2020
- Key similarities with MEPs
 - A single Form 5500, audit, and bond
 - Allocation of fiduciary responsibility

SECURE Act: PEPs – Key Difference from MEPs

- No relationship required between participating employers
- May be sponsored / administered by financial institutions
- Must have a Pooled Plan Provider (“PPP”)
- Trustee has additional responsibility

CARES Act

- Signed on March 27, 2020
- Loosens restrictions retirement plan loans
- Loosens restrictions on in-service distributions
- Waives minimum distribution requirements for 2020

CARES Act: Loans & Distributions

- Only available to “qualified individuals”
 - Participant diagnosed with coronavirus or with COVID-19
 - Participant’s spouse/dependents diagnosed with the virus or with COVID-19
 - Participant has been financially harmed because the participant, the participant's spouse, or a member of participant’s household (e.g., roommate, relative, or significant other):
 - Being quarantined
 - Being furloughed or laid off
 - Having work hours reduced
 - Being unable to work due to lack of childcare
 - The closing or reducing hours of a business that they own or operate
 - Having a reduction in pay (or self-employment income)
 - Having a job offer rescinded or start date for a job delayed
- Can rely on employee’s certification, unless have actual knowledge to the contrary
 - IRS Notice 2020-50 contains a model certification

CARES Act: Loans

- Old Rule
 - Plan loans limited to lesser of \$50,000 or 50% of vested account balance
- New Rule
 - Available loan amount increased to lesser of \$100,000 or 100% of vested account balance
 - Sunsets tomorrow!
- Loan repayments due between March 27, 2020 and December 31, 2020 can be suspended but continue to accrue interest
 - Re-amortization beginning January 1, 2021 and extended by 1 year over original payoff date

CARES Act: COVID Distributions

- Qualified individuals may request a “coronavirus-related distribution” from their vested account balance of up to the lesser of 100% of their account balance or \$100,000, even if the amount would not otherwise be distributable
 - Distribution may be in excess of the qualified individual’s financial need
- No 10% early distribution penalty tax
- No mandatory 20% federal tax withholding
- Repayment available to avoid taxation
 - Repayment within a 3-year period (or earlier)
 - Repayment treated as a 60-day rollover
 - Repayment can be to an employer’s plan or an IRA
- If no repayment, income tax is assessed ratably over 3 years, beginning in 2020
- Sunsets December 31, 2020

CARES Act: Waiver of RMDs

- Required minimum distributions not required during calendar year 2020
- If already paid, can be rolled back into the Plan (if allowed by Plan) or into an IRA to avoid taxation
- A rollover of what would have been an RMD does not count against the “one rollover per year” limit
- Applies to all plan participants, including 5% owners



Plan Document Issues

- Plan Amendment Deadlines:
 - December 31, 2022 for calendar year plans
 - Same deadline applies to both SECURE and CARES Acts
- Likely that IRS will come out with pre-approved amendments
- Restatement for defined contribution plans opened on August 1, 2020 and closes on July 31, 2022
 - Some plan document providers are putting off restatements in order to incorporate the pre-approved amendments



Questions?

Randy Cook and Christine Moehl, Employee Benefits Attorneys

rcook@sglaw.com

cmoehl@sglaw.com