



SECURE ACT PROVISIONS

**Understanding
and Applying
the
Practical Impacts
of the SECURE Act**

EXECUTIVE SUMMARY

The **Setting Every Community Up for Retirement Enhancement (“SECURE”) Act** is a bipartisan retirement bill that was included in a larger legislative package passed by the House of Representatives, and later by the Senate, and signed by the President in December 2019. It contains numerous components seeking to expand and modify retirement provisions to increase participant savings and retirement readiness.

PlanPILOT’s goal is to provide an overview of the provisions, their benefits, and either the necessary or appropriate action steps where applicable. Making this complex subject easier to understand will facilitate successfully implementing the appropriate changes for your retirement plan, satisfying your fiduciary responsibilities, and improving the retirement futures of your participants. This, in turn, can lead to a more satisfied workforce.

The attached chart provides further details of this important legislation. **The rows shaded in yellow are mandatory.** The un-shaded items are subject to the plan sponsor’s discretion to implement. We encourage you to read it carefully, then evaluate and select the applicable items.

It may be entirely appropriate to engage a consultant, counsel, and recordkeeper and/or plan administrator to facilitate a smooth implementation. Thoughtful process, championed by experts, leads to better, intended outcomes for you and your participants.

SECURE Act Summary of Key Provisions As Adopted December 2019	BENEFITS	ACTION STEPS
Plan years beginning after 12/31/19:		
The age for required minimum distributions is increased to attaining age 72 from 70-1/2 after 12/31/19.	Allows greater accumulation of retirement savings.	Plan document needs amendment. Recordkeeper system and plan administrator need to be updated to implement.
Plan loans can no longer be made through use of a credit card.	Limits accessibility of multiple, small plan loans.	Recordkeeper system or plan administrator needs to be updated to implement immediately.
Increases various penalties for failure to file forms and notices (e.g. failure to file Form 5500 penalty increases from \$25 per day to \$250).	Seeks greater compliance.	Recordkeeper system, plan administrator, auditor or counsel, etc. needs to be careful to avoid.
Distributions can be made for " qualified birth or adoption " up to \$5,000 without meeting other distribution requirements and without tax penalty and withholding after 12/31/19.	Facilitates distributions to assist with birth or adoption.	Plan document needs amendment. Recordkeeper and payroll systems need to be updated to implement.
<p>The "Qualified Automatic Contribution Arrangement" ("QACA") safe harbor for automatic enrollment and escalation is liberalized to raise the limit on the maximum amount that can be deferred (automatically) from 10% to 15%.</p> <p>The first-year default contribution rate can be set as high as 10%.</p> <p>Under current law, a QACA safe harbor plan must begin at 3%, escalating to at least 6%, but no more than 10%, after the first year.</p>	Increases the participants' retirement readiness by increasing the default savings rates. Data shows vast majority of participants defaulted at a savings rate do not change it.	<p>Consider appropriate level of auto enrollment and escalation.</p> <p>Plan document needs amendment if adopting.</p> <p>Recordkeeper and payroll systems need to be updated to implement.</p>

SECURE Act Summary of Key Provisions As Adopted December 2019	BENEFITS	ACTION STEPS
<p>Plans using “401(k) Safe Harbor” to satisfy non-discrimination rules (e.g. ADP and ACP tests) no longer bear the requirement to provide notice of the safe harbor when making non-elective contributions (as opposed to making the safe harbor’s required matching contribution, which still requires a notice).</p> <p>Also, plan sponsor has more flexibility in adopting this safe harbor (generally, until 30th day before the close of the plan year, but later in some situations).</p>	<p>Eases administrative burdens of adopting this safe harbor.</p>	<p>Consider utilization of safe harbor for meeting non-discrimination requirements.</p> <p>Plan document needs amendment if adopting.</p> <p>Recordkeeper system or plan administrator needs to be updated.</p>
<p>Participants are now allowed to take a distribution of a guaranteed income investment if that investment option is no longer offered under the plan. Distribution must occur via a direct rollover to an IRA or other qualified retirement plan, or if an annuity contract, through direct distribution of the contract to the participant.</p>	<p>Expands maintenance and portability of guaranteed income options without IRS’ withdrawal restrictions.</p>	<p>If terminating a lifetime income option, recordkeeper system or plan administrator needs to be updated to implement.</p>
<p>Individuals who attain age 70-1/2 in tax years beginning after 12/31/19 can continue to make contributions to IRAs (if they otherwise meet the eligibility requirements).</p> <p>Required distributions to designated beneficiaries (after the death of a plan participant) will, generally, have to be made within 10 years following the death of the participant, with exceptions for surviving spouse and minor children..</p>	<p>Expands retirement savings.</p>	<p>None for retirement plan sponsor except to be aware in discussions with participants.</p>

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Plan years beginning after 12/31/20:		
<p>If a 401(k) plan requires a waiting period for plan entry, the plan must now provide an opportunity for long-term part-time employees to defer. In addition to the traditional one year with 1,000 hours of service, this new rule covers employees who have at least 500 hours of service for at least three consecutive years.</p> <p>Employees entering under this long-term part-time employee rule can be excluded from receiving employer contributions. There are also special provisions defining excluding these employees from nondiscrimination and coverage rules.</p> <p>Participants under the 500 hours level are not deemed to have a break in service.</p>	<p>Expands employee ability to participate and save for retirement at least through deferrals.</p>	<p>Consider appropriate level of plan eligibility and encouraging greater participation.</p> <p>Plan document needs amendment if requiring waiting period.</p> <p>Recordkeeper system and plan administrator need to be updated to implement.</p>
<p>“Open” Multiple Employer Plans (“open MEP”) referred to as “Pooled Employer Plans” (“PEP”) will be allowed. Previous rules required members to share a common interest - an economic or organizational connection (aka “closed MEP”). There must be a “Pooled Plan Provider” (“PPP”) to provide ERISA administrative oversight.</p>	<p>Facilitates easier ability of smaller-to-mid-size retirement plans to pool their assets for shared investment and administrative oversight, presumably at substantial cost savings, without the shared interest requirement.</p>	<p>Consider availability of a closed MEP already in existence or one soon forming and its potential benefits to the plan sponsor and its participants.</p> <p>Or, consider benefits of an open MEP as they develop in 2020 and beyond.</p>
<p>Elimination of “one bad apple” rule where one plan sponsor in a MEP that does not meets its plan qualification rules could disqualify the entire MEP. Going forward, the offending plan would be spun-out of the MEP.</p>	<p>Eliminates the concerns of plan sponsors joining MEPs over the conditions of a single plan.</p>	<p>Plan sponsors can take greater comfort in their decision to join a MEP.</p>

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Timing TBD after further regulatory action:		
Plan benefit statements will be required to include a lifetime income disclosure at least annually . This must illustrate the estimated monthly payment under a qualified joint and survivor annuity and a single life annuity. The DOL needs to define the assumptions that can be used, issue a model disclosure, and issue final rules.	Seeks to provide participants with greater clarity on estimated retirement income.	DOL needs to act. Then, recordkeeper system or plan administrator needs to be updated to implement.
Safe harbor will be added to ERISA for the selection and monitoring of annuity provider , including that the plan's fiduciaries may rely on written representations from insurers of their financial capabilities, specify that the fiduciary is not required to select the lowest-cost annuity but may consider features and benefits, clarify that the fiduciary is not required to review the appropriateness of a selection after the purchase of a contract for a participant, and that the fiduciary satisfies its responsibilities by obtaining written representations from the insurer at least annually (unless the fiduciary otherwise becomes aware of facts that would cause the fiduciary to question the representations).	Seeks to expand the use of guaranteed income options by defining the fiduciary oversight role.	DOL needs to act. Then, fiduciary and insurer need to coordinate to implement the oversight responsibilities and protections.
If a 403(b) plan is terminated, the mutual funds held in custodial accounts can be distributed in-kind and retain tax-deferred status. Annuity contracts already could be "distributed" to the participant.	Seeks to provide longer-term retirement savings if a plan is terminated.	Treasury needs to act. Then, if terminating the plan, plan document needs to be amended and recordkeeper system or plan administrator needs to be updated to implement.

The SECURE Act also provided remedial amendment periods for plan document updates to implement these changes: private (non-governmental and non-collective bargaining) plans have through the last day of the plan year that begins in 2022 to amend, while governmental and collective-bargaining plans have through the last day of the plan year that begins in 2024. Any plan document update that is material necessitates a Summary of Material Modifications or Summary Plan Description be provided to participants subsequently.

If you would like more information or guidance on managing your retirement plan administration and the potential impacts of the SECURE Act, please contact PlanPILOT at info@planpilot.com or **(312) 973-4911** or visit our website: <http://planpilot.com>

Please note: *The information provided herein does not, and is not intended to, constitute legal or tax advice; instead, all information is for general informational purposes only. Readers should contact their attorney or tax advisor to obtain advice with respect to any particular legal or tax matter.*

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