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Recent Changes to Retirement Plans

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On December 20, 2019, the Setting Every Community Up for Retirement Enhancement Act of 2019 (the SECURE Act) was signed into law, bringing with it a number of significant changes to qualified retirement plans. The law took effect on January 1, 2020, although certain provisions relating to qualified retirement plans may have a later effective date. Some of the provisions are optional, but many of them are required. This article highlights some of the key provisions of the SECURE Act, the effective dates, and how these provisions may affect your qualified retirement plan.

- For individuals who reach age 70-1/2 after December 31, 2019, the age at which required minimum distributions must be made is increased to age 72. However, the Coronavirus Aid, Relief, and Economic Security (CARES) Act provides for a one-year delay for required minimum distributions that are scheduled to be made in 2020.
- For individuals who die after December 31, 2019, defined contribution and IRA accounts must be fully distributed within 10 years following the year of the individual's death. However, a lifetime distribution option remains available for spouses, minor children, and chronically ill or disabled beneficiaries.
- Beginning in 2020, participants may be permitted to obtain a penalty-free distribution from a qualified retirement plan of up to $5,000 for expenses related to the birth or adoption of a child. Participants may also repay the distribution to restore their retirement accounts.
- The SECURE Act contains several provisions that are intended to make it easier for qualified retirement plans to offer annuity investment options. Additionally, the Department of Labor is instructed to develop a model disclosure for providing lifetime income information on participant's annual benefit statements.
- Starting with plan years beginning on or after January 1, 2021, part-time employees who work at least 500 hours during three consecutive 12-month periods (and have reached age 21) must be eligible to participate in the 401(k) component of their employer's plan. The employer is not required to contribute matching or other employer contributions for these employees.
- Starting in 2020, an employer may amend its 401(k) plan to adopt a 3% nonelective safe harbor contribution, as long as the amendment is adopted at

least 30 days before the end of the plan year. If the plan is amended after that deadline, the nonelective safe harbor contribution must be 4% of compensation. Further, 401(k) plans that use the nonelective safe harbor contribution are no longer required to provide an annual safe harbor notice, as long as participants are allowed to make or change their deferral elections at least once a year.

- Starting in 2020, if a 401(k) plan is a “qualified automatic contribution arrangement” (QACA), the maximum percentage that the plan may use for automatically enrolling an employee or automatically increasing the employee’s salary deferrals is increased from 10% to 15% of compensation.
- Starting in 2020, pension plans may permit in-service distributions beginning at age 59-1/2 under certain circumstances.
- Effective for returns, statements, and notices that are required to be filed or provided after December 31, 2019, the penalties for failing to file or provide the required notices have increased. However, the CARES Act authorizes the Department of Labor to postpone certain filing deadlines by up to one year.

In addition to the SECURE Act, the CARES Act, which was signed into law on March 27, 2020, contains several provisions that apply to retirement plans. Two significant changes are noted below:

- The CARES Act permits penalty-free distributions of up to $100,000 from qualified retirement plans and IRAs, including 401(k) plans, if certain conditions are met. The amount distributed may be repaid at any time over a three-year period. If it is not repaid, the distribution can be included in income over three tax years, beginning with the tax year in which the distribution was received.
- For certain participants, the CARES Act increases the dollar amount available for participant loans from $50,000 to $100,000, and increases the percentage available from 50% to 100% of the participant’s account balance or accrued benefit for a 180-day period. If a loan payment is due between March 27, 2020, and December 31, 2020, the payment may be delayed for one year from the original due date. Future loan repayments must be adjusted to reflect the delay and the corresponding accrued interest. The one-year delay is disregarded for purposes of the five-year loan repayment period that is normally required.

Qualified retirement plans must be amended to reflect all of these changes by the end of the 2022 plan year. In the meantime, plans must be operated as if the amendments were in effect. Further guidance is needed from the Internal Revenue Service and the Department of Labor for many of these provisions. Employers should discuss these changes with their third-party administrators and other advisors to determine the best approach for implementing the changes.