Covid-19 Isn't The Only Thing Challenging Employers In 2020 – Part 2

Nothing that is presented during this educational program is intended as tax advice, and this program does not address all federal, state or local regulatory or other issues raised by the subject matter it addresses.

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- At the end of the webinar, there will be a brief Q&A period, any questions not answered will be accumulated and answers provided on the website

2019 SECURE ACT

The **S**etting **E**very **C**ommunity **U**p for **R**etirement **E**nhancement Act of 2019, commonly known as the SECURE Act and passed in December 2019, has the laudable goal of ensuring Americans don't outlive their assets.

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AGENDA: SECURE ACT

- Impact to Defined Contribution Plans
- Impact to Individual Retirement Accounts
- Impact to Other Benefit Plans
- Administrative Provisions
- SECURE Act 2.0 Proposal

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IMPACT TO RETIREMENT PLANS

- Participation available for long-term part-time employees
- Increases the age for a required minimum distribution
- Plan distributions for the birth or adoption of a child
- Increase in automatic enrollment cap
- Enhancements to employer tax credits
- Changes to lifetime income (annuity rules)
- Simplification of the safe harbor 401 (k) rules
- Establishment of a 401(k) plan after year end

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Participation Available for Long-Term Part-Time Employees

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401k Plan Participation Available for Long-Term Part-Time (LTPT) Employees

Currently, employers may exclude part-time employees who work less than 1,000 hours per year from plan participation.

Beginning in 2021, the new law allows eligibility for employees who have worked at least 500 hours per year for at least three consecutive plan years.

- Employers can impose an age restriction
- Employers can impose a standard entry date

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401k Plan Participation Available for Long-Term Part-Time (LTPT) Employees

- Employers will have a dual eligibility requirement under which an employee must complete one year of service under the 1,000-hour rule or complete 500 hours of service annually for three consecutive years.

- The part-time employee rule does not apply to union employees.

- For example, in 2024, after three years of qualifying service, eligible part-time employees must be allowed to make elective deferrals to the plan.

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401k Plan Participation Available for Long-Term Part-Time (LTPT) Employees

Employers can exclude LTPT employees from the following:

- Safe harbor contributions
- Other employer contributions
- Top-heavy minimums and vesting
- Coverage, ADP, ACP testing

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401k Plan Participation Available for Long-Term Part-Time (LTPT) Employees

Special Rules:

Vesting

- If an employer chooses to contribute for LTPT employees
  - Vesting years of service is any vesting period with at least 500 hours of service
  - Vesting break in service is a period with less than 500 hours

1,000 hour Rule

- If a LTPT employee meets the 1,000 hour requirement, they participate as other employees do
  - Receive employer contributions
  - Included in plan testing

401k Plan Participation Available for Long-Term Part-Time (LTPT) Employees

Clarification from notice 2020-68:

You do not need to count years before 2021 to determine if a worker is LTPT

Vesting

- Must count all years to determine vesting
  - Years before 2021 (year of vesting for every year in which the employee worked 500 hours or more)
  - Unless the employee can be excluded under normal vesting rules (e.g. under 18)

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Q&A: Are employer contributions required for employees who become eligible to participate in the plan under the new long-term part time employee rules?

No, employers can exclude LTPT employees from the following:

- Safe harbor contributions
- Matching contributions
- Non-elective contributions
- Profit Sharing Contributions
- Other employer contributions

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Required Minimum Distribution Changes

Increase in Age for a Required Minimum Distribution (RMD)

Currently, the age to begin Required Minimum Distributions (RMD) is 70 ½ .

Under the Act, the requirement for an RMD increases to 72.

Effective for distributions after 2019 for individuals turning 70 ½ after 12/31/19

- Effective for individuals born after 6/30/1949
- Applies to IRA's, 401(k), 403 (b), 457 (b) plans
- Plan amendment is needed

Plan Distributions for Birth or Adoption

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Plan Distributions Allowed for the Birth or Adoption of a Child

Distributions up to $5,000 are now allowed for qualified birth or adoption expenses in a one-year period after the birth or finalized adoption.

- Applies to qualified DC plans, 403(b), Gov't 457 (b) and IRA's
- Plan amendment is required

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Plan Distributions Allowed for the Birth or Adoption of a Child

Who is an eligible adoptee?

- An individual who has not attained age 18 or is physically or mentally incapable of self-support

  Incapable of self support means:

  - Unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or be of a long continued and indefinite duration

Plan Distributions Allowed for the Birth or Adoption of a Child

Additional Rules

- The 10% early distribution penalty is waived, but is still subject to income tax
- The distribution can be repaid to a contributing plan or an IRA and would be treated as a rollover
- Employee must include the name, age, TIN on the income tax return in the year of distribution
- If both parents are in qualified plans, each can take a distribution of up to $5,000

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Q&A: What are the tax filing requirements to exempt the participant QBAD From 10% penalty?

A distribution to an individual will not be treated as a qualified birth or adoption distribution with respect to any child or eligible adoptee unless the individual includes the name, age, and the Taxpayer Identification Number (TIN) of the child or eligible adoptee on the individual's tax return for the taxable year in which the distribution is made.

Increase in Automatic Enrollment Cap

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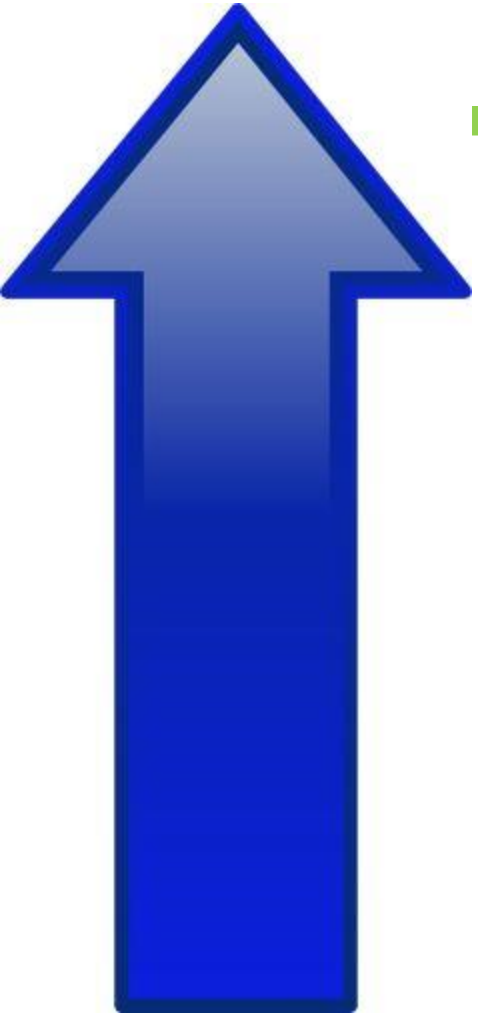
Increase in Automatic Enrollment Cap



- The existing law promotes increased participation by allowing employers to automatically enroll employees in their plan at a default salary deferral percentage and increase employees' deferral percentages on an annual basis if an escalation feature is selected.
- Currently, employers can increase the deferral percentage annually to a maximum of 10 percent.
- The Act raises the maximum to 15 percent and requires a plan amendment.

Employer Tax Credits

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Enhancements to Employer Tax Credits

<u>Retirement Plan Start-Up Tax Credit</u>: The Act provides new incentives for any small business (generally with 100 or fewer employees) starting a qualified retirement plan. The law now offers a three-year tax credit for 50% of annual plan start-up and administrative costs.

The credit is limited to the lesser of $5,000 or $250 for each eligible non-highly compensated employee per year for plan years beginning after Dec. 31, 2019, and applies to SEP, SIMPLE, 401(k) and profit-sharing type plans.

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Enhancements to Employer Tax Credits

<u>Small Employer Automatic Enrollment Tax Credit</u>: The Act added a new $500 per year tax credit for three years to any employer adding an automatic contribution enrollment feature to its retirement plan beginning after Dec. 31, 2019. Any sponsor of a new or an existing plan is eligible for the credit.

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Enhancements to Employer Tax Credits

<u>Small Employer Automatic Enrollment Tax Credit Period</u>:

- Credit is available for three years starting with the year the EACA was adopted or added.
- Only one three-year period per employer (can't adopt a second EACA)
- Credit is only available after 2019. For example, if an employer adopted a EACA in 2018, the credit is available for 2020 but not thereafter.

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Q&A: What types of plans qualify for small plan tax credits?

- 401k plans
- SEP plans
- SIMPLE IRA

403(b) and 457(b) plans do not qualify

Changes to Lifetime Income Annuity Rules

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Changes to lifetime income rules (annuity rules)

The Act also makes it easier for 401(k) plan sponsors to offer annuities and other “lifetime income” options to plan participants by taking away some of the associated legal risks.

These annuities are also now portable, so a participant can roll over a 401(k) annuity to another 401(k) or IRA and avoid surrender charges and fees if the current plan no longer allows that investment option.

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New lifetime Income Statements

Among the disclosures plan participants are currently required to receive is a statement (at least annually) detailing the balances of assets held within their retirement accounts. The Act now also requires employers to provide an annual “lifetime income disclosure statement” to plan participants. This statement should show the monthly lifetime benefit that the balance of their accounts will provide if used to purchase a single life or qualified joint survivor annuity.

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Lifetime Income Statements (for ERISA plans)

Lifetime income stream equivalent of balance of account, expressed in a monthly benefit

- Rules takes effect on September 18, 2021 and will apply to plan statements issued after that date
  - Interim rule: https://www.federalregister.gov/documents/2020/09/18/2020-17476/pension-benefit-statements-lifetime-income-illustrations
  - 60-day comment period ended on November 17, 2020 and will use comments to improve the final rule before its effective date.
- Plan fiduciaries that use the regulatory assumptions and the model language prescribed by the rule will qualify for liability relief and will not be held liable if participants are unable to receive equivalent monthly payments, according to the DOL. The liability relief addresses plan sponsors' concerns that participants might sue them if actual monthly payments in retirement fall short of the projections provided prior to retirement.
- Plan administrator must derive the lifetime income projections using assumptions set forth in the rule and use the rule's model language (or substantially similar language) in participants' benefit statements to qualify for relief.

Lifetime Income Disclosures

DOL Example, as of 12/31/2022 for a 40 y/o participant who is single. This is their example disclosure:

Current Account Balance	$125,000
Single Life Annuity	$645 per month for life (assuming Participant X is age 67 on Dec. 31, 2022).
Qualified Joint and 100% Annuity	$533 per month for participant's life, and $533 for the life of spouse following participant's death (assuming Participant X and hypothetical spouse are age 67 on Dec. 31, 2022).

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Lifetime Income Disclosures

The estimates must explain what the lifetime income examples mean and the assumptions that were used to calculate them.

Plan administrators are instructed to follow these directives:

- Assume that the lifetime income begins as of the last day of the statement period.
- Assume that participants are age 67 (or actual age, if older) on the statement date.
- Assume participants are married, and their spouse is the same age.
- Use the gender-neutral mortality table in the Internal Revenue Code to determine how long participants and spouses are likely to live.
- Use an interest rate equal to the 10-year constant maturity Treasury securities yield rate to approximate the rate used by the insurance industry to price immediate annuities.

A participant's account balance is his/her total account balance without regard to any vesting provision and includes outstanding loans that are not in default.

Simplification of Safe Harbor 401k Plan Rules

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Simplification of the Safe Harbor 401(k) rules

A non-elective safe harbor 401(k) plan is one that provides for a fully vested employer contribution of at least 3 percent of each participant's compensation annually regardless of whether the participant makes elective deferrals.

- The Act encourages employers to create non-elective safe harbor plans by relaxing some of the past administrative and operational requirements.

Simplification of the Safe Harbor 401(k) rules

Beginning Jan. 1, 2020, the law:

- Eliminates the safe harbor notice requirement for non-elective safe harbor 401(k) plans. However, the notice requirement continues to apply to 401(k) plans that meet safe harbor requirements through matching contributions.
- Permits a 401(k) plan to be amended retro-actively and become a non-elective safe harbor plan if the amendment is adopted up to 30 days before that plan year ends.
- Permits amending a 401(k) plan retro-actively so it becomes a non-elective safe harbor plan for a plan year (even if the amendment does not occur before the 30th day before the close of that plan year). However, the non-elective contribution must be at least 4 percent of participant compensation, and plan adoption happens within 12 months after that plan year ends.

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Establishment of a 401k Plan After Year End

Establishment of a 401(k) plan after year end

- Under current law, an employer must adopt a 401(k) plan by the end of the employer's taxable year for the plan to be effective for that year.
- The Act encourages the adoption of new retirement plans by allowing an employer to adopt a new retirement plan for a taxable year as late as the due date for filing of its tax return for that year, including extensions.

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IMPACT TO INDIVIDUAL RETIREMENT ACCOUNTS

- Minimum Required Distribution Changes
- Repeals the Maximum Age for Contributions
- Stretch IRA's Curtailed

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Minimum Required Distribution Changes

Required minimum distribution age increased from 70 ½ to 72

This change only applies to individuals who attain age 70½ after December 31, 2019, so if your required beginning date was in 2019 or earlier under the old rule, the old rule still applies even if you are not yet 72.

Repeals the Maximum Age for Contributions

- **Repeals the maximum age for traditional IRA contributions, which was 70½**
  Beginning 2020, there is no longer an age limit for contributions to traditional IRAs. Contributions can be made at any age if the individual has compensation, which generally means earned income from wages or self-employment. Additionally, making a deductible contribution after age 70½ may reduce the maximum allowable Qualified Charitable Distribution (i.e. "QCD" max currently $100,000).
- The age for QCDs remains at 70½.
- There still is no age restriction on Roth IRA contributions
- This change applies to 2020 and beyond

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Curtailment of Stretch IRA’s

- Current law allows non spouse designated beneficiaries to receive distributions over their life expectancy. (‘Stretching out’ the tax deferral advantages by taking distributions over the beneficiary’s life or life expectancy).
- Under the new rules, distributions to most death beneficiaries are limited to 10 years.
- There are some exceptions, however, for certain “eligible designated beneficiaries” who are not spouses, such as the account holder’s minor children, who have different rules. Note: Inherited IRAs from owners who died before 2020 continue to apply the old rules.

Q&A: Can an individual offset the amount of required minimum distributions for a taxable year from the individual's IRA by the amount of post-age 70½ contributions for the same taxable year?

No. An individual may not offset the amount of required minimum distributions from the individual's IRA by the amount of post-age 70½ contributions for the same taxable year. Contributions and distributions are each separate transactions and are independently reported by the financial institution to the IRS.

Q&A: Can taxable non-tuition amounts for fellowships, stipends or postdoctoral studies count as compensation for IRA contribution purposes ?

Yes, for 2020 and moving forward, the SECURE Act stipulates that taxable amounts to aid in the pursuit of graduate or postdoctoral study count as compensation for IRA contribution purposes. Examples are fellowship, stipend, or similar payments, thus making it easier for individuals receiving such payments to save through an IRA. Check with the student’s program to determine if the payment will qualify.

IMPACT TO OTHER RETIREMENT PLANS

- Defined Benefit Plan Changes
- 403(b) Plans Specific Rules
- Section 529 Plans

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Impact to Defined Benefit Plans

- The Act allows favorable non-discrimination testing for DB plans with closed classes of participants.
- The Act permits existing participants of closed plans to continue to accrue benefits.
- This will protect the benefits of older, longer service employees as they near retirement.

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Impact to Defined Benefit Plans

For Closed DB Plans, allows relief for

- Benefits, Rights and Features (BRF) testing
- DB/DC combination plans
- Minimum participation

General Requirements

- Pass testing for year of closure and following two years
- No later discriminatory amendments
- No increases in last 5 years (does not apply if plan closed before 4/5/2017)

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403(b) Specific Rules

Custodial Accounts in Plan Termination

- Currently, when a 403(b) plan terminates, the plan can distribute the annuity contract or certificate of group annuity contract to participants and is treated as a free floating 403(b) plan. There is no provision for custodial accounts with mutual funds.

- SECURE Act requires the IRS to expand this rule to cover custodial accounts within six months of enactment

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Section 529 Plan Changes

The Act expands Section 529 savings plans to:

- To cover costs associated with apprenticeship programs and homeschooling.
- To pay up to $10,000 in qualified student loan repayments (including those for siblings) and private elementary, secondary, or religious schools.

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Administrative Provisions

- Increased Fines and Penalties for Failure to Retirement Plan Returns and notices
- Amendment Deadline

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Increased Penalties for Failure to File Retirement Plan Returns

The Act modifies penalties for retirement plans
In several areas:

- The penalty for failure to timely file IRS Form 5500 “Annual Return/Report of Employee Benefit Plan” increases to $250/day up to $150,000 per year (up from $25 per day to a max of $15,000 per year).
- The penalty for failure to file Form 8955-SSA “Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits” increases to $10 per participant per day up to $50,000 (up from $1 per participant per day to a max of $5,000).

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Increased Penalties for Failure to File Retirement Plan Returns

The Act modifies penalties for retirement plans
In several areas:

- The penalty for failure to file notification of a change in the status of the plan (such as a change in plan name, a termination of the plan, or a change in name or address of the plan administrator) has increased to $10 for each day the failure occurs, up to maximum of $10,000 (up from $1/day to a max of $1,000). Notification of a change occurs when the plan sponsor or administrator completes Form 5500, 5500-SF, or 8955-SSA, and, at that time, identifies any changes to the plan on the form.

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Increased Penalties for Failure to File Retirement Plan Returns

The Act modifies penalties for retirement plans
In several areas:

- Failure to give notice concerning tax withholding to recipients of distributions now results in a penalty of $100 for each failed notice up to $50,000 per year (up from $10 per failed notice to a max of $5,000)

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2022 Amendment Deadline

There will be no operational failures if the plan is amended by the last day of the first plan year beginning on 1/1/2022.

- IRS can grant a later deadline
- Governmental and certain union plan deadlines are extended 2 years
- Amendment must be retroactive
- Presumably, deadline for terminating plans is termination date

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On the horizon....

More retirement reform!

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"SECURE ACT 2.0"

COMMITTEE ON
WAYS AND MEANS

On October 27, 2020, the House Ways and Means Committee introduced ***Securing a Strong Retirement Act,*** building on changes made by SECURE Act in 2019

Bipartisan Proposal of Chairman Richard Neil (D-MA) and Kevin Brady (R-TX)

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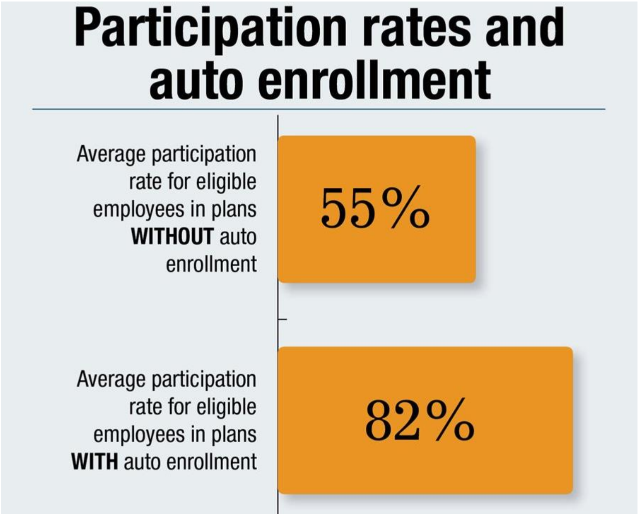

"SECURE ACT 2.0"

Mandatory auto-enrollment

- Allows permissible opt-outs
- Provides for an automatic contribution rate that is not less than 3 % and not more than 10 % of pay
- Provides for automatic escalation of that contribution by 1 percentage point for each year of participation (not above 10%)
- Provides for a default investment into a qualified default investment alternative (QDIA) (e.g., a target date fund)

- EXEMPTIONS: Plans established before enactment, new businesses (for the first three years), and very small employers (10 or fewer employees)

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"SECURE ACT 2.0"

Changes to RMD rules

- Increase required beginning age from 72 to 75
- RMDs would not apply to participants with balances (within defined contribution plans and IRAs) of up to $100,000 at age 75

- Reduce the excise tax on failure to make an RMD from 50% to 25%, further reduced to 10% where the required distribution is ultimately made before the earlier of (1) initiation of an audit or (2) the end of the second taxable year after the end of the year in which the tax is imposed.

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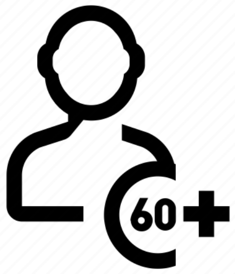
"SECURE ACT 2.0"



- Increase catch-up contribution limits for individuals age 60 and over to $10,000

- Require paper statements for 401(k) at least once per year

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“SECURE ACT 2.0”

Would allow matching contributions on student loan repayment-related 401(k) contributions

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“SECURE ACT 2.0”

Long-Term Part Time Employees

Reduce the service requirement for long-term part-time employees (employees working more than 500 but less than 1,000 hours per year) from three consecutive years to two consecutive years.

Incentives

Provide an exemption from the general prohibition on contribution incentives (other than matching contributions)

Allow “de minimis financial incentives” (ex. small gift card)

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“SECURE ACT 2.0”

- Allow simplified annual disclosure for unenrolled participants
- Revise Internal Revenue Code and ERISA rules to allow flexibility in the treatment of plan overpayments
- Allow use of a blended benchmark for asset allocation funds (e.g., target date funds), subject to certain conditions
- Provide a safe harbor for correcting deferral errors that occur when implementing an automatic enrollment or automatic escalation feature, allowing (subject to certain conditions) correction within 9 1/2 months after the close of the plan year without penalty
- Expand the Employee Plans Compliance Resolution System (EPCRS)

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“SECURE ACT 2.0”

Enhance Tax Credits:

- Increase the small plan startup credit for certain small employers (no more than 50 employees) and add a new limited credit for employer contributions for the first four years.
- Simplify and increase the Saver’s Credit, to 50% of the first $3,000 of contributions (to be indexed for inflation), phased out for incomes over $40,000 (single filers)/$80,000 (joint filers). The Treasury Secretary is instructed to promote this credit.

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Would establish an Office of Retirement Savings Lost and Found (RSLF), to be managed by PBGC, charged with developing and maintaining an online searchable database of unclaimed benefits of participants and beneficiaries

- Annual registration requirements (additional information)
- Post transfer to IRA would be invested in a target date or life cycle fund
- Raise caps on mandatory cash-outs from $5k to $6k with transfers to RSLF unless participant elects otherwise

Questions?

Thank you

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FREQUENTLY ASKED QUESTIONS

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Q&A: How long do I have to withdraw funds from an inherited retirement plan account?

Generally, if you inherit an IRA or 401(k) from anyone other than your spouse, you must withdraw the entire balance within 10 years of the account owner's death.

You may have more time to access the funds if:

- you are disabled or chronically ill;
- a child who has not reached the age of majority;
- or are not more than 10 years younger than the IRA holder or plan participant.

In addition, trusts are subject to different rules and may be required to receive the entire balance within 5 years. Consult a financial professional or tax expert with questions about your specific situation.

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Q&A: Is there still an age limit for contributing to a traditional IRA?

No!

The law removes the age limit for contributing to a traditional IRA. Prior to 2020, individuals could not contribute to a traditional IRA if they were 70½ or older. Now there is no age limit as long as the person is *still working and has earned income*.

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Q&A: For Qualified Birth and Adoption Distributions – can an adoptee be a child of the individual's spouse?

No.

An "eligible adoptee" as any individual who has not attained age 18 or is physically or mentally incapable of self-support. However, an eligible adoptee does not include an individual who is the child of the taxpayer's spouse.

Q&A: What changes were made to the qualified charitable distribution (QCD) rules as a result of the Act?

Account owners age 70½ and older may continue to contribute up to $100,000 per year directly from their IRA to a public charity and exclude the distribution from their taxable income. Because the SECURE Act removed the restriction on traditional IRA contributions after age 70½, however, a new anti-abuse rule has been instituted for QCDs. Now, you must reduce your intended QCD by the cumulative amount of deductible IRA contributions made to your account after age 70½ that have not already offset a previous QCD. This is designed to prevent individuals from getting a duplicate tax benefit on QCDs and traditional IRA contributions after age 70½.

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