THE SECURE ACT:

WHAT IT MEANS FOR RETIREMENT PLANNING

A bill that comprehensively reshapes the realm of employer-sponsored retirement plans for employers and employees alike has been passed into law. The bipartisan Setting Every Community Up for Retirement Enhancement (SECURE) Act—originally introduced in April 2019—was signed into law by President Trump on December 20, 2019. We are still expecting additional guidance to be provided on several of the provisions of the SECURE Act, but below is a summary of what we know today.

What is the Intention of the SECURE Act?

The overwhelming narrative of the SECURE Act is the expansion of retirement plan coverage and the lowering of retirement savings hurdles for working Americans. With the passage of the SECURE Act, lawmakers seek to place the onus on employers to incentivize employees to invest in their own financial futures. The act is also intended to help employers overcome some of the challenges involved with offering and administering a workplace retirement plan.

What Does the SECURE Act Mean for New Retirement Plans?

Tax credits are a key benefit designed to incentivize creating a workplace retirement plan:

- The SECURE Act increases tax credits for plan startup costs for 3 years (the first year of a plan and the 2 years immediately following) and works as follows: A tax credit of 50 percent of expenses up to the greater of $500 or $250 times the number of non-highly compensated employees (NHCEs), not to exceed $5,000.
- The SECURE Act also provides tax credits to businesses that offer an automatic enrollment provision to their employees in 401(k) and SIMPLE IRA plans. This change incentivizes business owners and organizations to make saving easier for employees. It is a $500 tax credit for 3 years for implementation in 2020 or later. Please note, these tax credits will only affect plans that begin offering automatic enrollment in 2020 rather than plans that are already offering this provision.

In addition, starting in the 2020 tax year, plan sponsors have additional time to adopt a retirement plan. They can decide to set up a plan as late as the due date of their tax return, which means that businesses can know their profits before establishing a retirement plan.

What Does the SECURE Act Mean for Retirement Plan Sponsors?

Although the SECURE Act includes 29 provisions in total, below is a breakdown of those that specifically affect retirement plans.

- **Allow long-term, part-time employees to participate in the retirement plan.** Employers are required to offer eligibility to these employees once they complete either one full year of service (with more than 1,000 hours worked) or three consecutive years of service with at least 500 hours worked per year.
- **Allow pooled employer plans (PEPs).** PEPs permit unrelated small businesses to band together in an open retirement plan arrangement. The idea is that this will enable companies with smaller plans to take advantage of economies of scale and employ features that typically are available only in larger plans. Per the new law, these plans can be effective in January 2021.
- **Increase the automatic safe harbor deferral maximum to 15 percent.** Up from 10 percent, this increase raises the ceiling for employees to take advantage of automatic in-plan retirement saving.
- **Simplify 401(k) safe harbor rules by eliminating certain notice requirements.** Included among the eliminated requirements is the nonelective safe harbor 401(k) notice for plans that provide a 3 percent nonelective safe harbor contribution to employees. Lifting this requirement eases some of the administrative burden that falls on plan sponsors with respect to notice delivery.
- **Remove the restriction on retirement contributions after account owners reach age 70½.** This change makes it possible for account owners to make contributions to retirement accounts, regardless of their age.
- **Raise the age for required minimum distributions from 70½ to 72.** As a result, retirement savings can last longer into retirement years as Americans' life expectancies increase.
- **Require lifetime income projections to appear on plan participant benefit statements.** As a result, retirement savers are provided a clearer picture of their retirement savings progress.

Next Steps

The provisions of the SECURE Act went into effect on January 1, 2020. Given the proximity of the act's passage to its effective date, however, a remedial amendment period clause allows employers to make changes to their plans by the 2022 plan year (or the 2024 plan year for certain governmental plans). This clause will help ease the administrative burden on employers to comply with the new law.

For retirement plan administrators and business owners who either currently offer or are interested in starting to offer a workplace retirement plan to their employees, the signs are clear: lawmakers are focused on improving the American retirement system through increased—and easier—access to retirement savings vehicles, particularly workplace retirement plans.

Our Corporate Retirement team at BFG will be prepared to discuss the changes that the SECURE Act brings and recommend changes that may benefit existing retirement plans at our client Review meetings. We will help you determine what plan amendments are required, as well as what enhancements can be made. These are good first steps toward setting your company's retirement plan up for future success, given the monumental legislative changes the SECURE Act brings.

Many employers have expressed interest in the pooled employer plan (PEP) concept. We are evaluating the PEP avenue that the SECURE Act provides and how that might benefit both new and existing retirement plans. We have been in conversations with providers that can put together a PEP. The PEP's predecessor, known as a MEP, has been available for some time but is less appealing due to a "bad apple" rule that, without going into detail, created unreasonable liability for employers. The concept of a PEP is great, yet there are still some potential downsides for certain employers that we will only be able to address after the regulations are actually written and reviewed.

Now that the legislators have done their job, we are waiting on guidance and final written regulations on how to implement and manage these PEPs. The legislation states that the first PEPs cannot be written until January 2021 following publishing of those regulations. We will continue to monitor the situation and will provide updates as further guidance is released from the Department of Labor and IRS.

For More Information

For more information or assistance, please contact our Corporate Retirement team at **210–745–6393**, toll-free at **1–888–757–2104**, or **CorporateRetirement@BFGonline.com**.

The SECURE Act also has some provisions that affect estate planning. We will follow-up with an explanation of these additional provisions and some thoughts to consider.

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