SECURE Act Changes for Employer-Sponsored Retirement and Health Plans

SECURE Act Changes Effective Upon Enactment
• Extends nondiscrimination testing relief for certain closed or "soft-frozen" defined benefit plans, with an option to apply the rules to plan years beginning after December 31, 2013.
• Adds a new safe harbor for a defined contribution plan fiduciary's selection of a lifetime income provider.
• Provides that "qualified disaster distributions" up to $100,000 are exempt from the early distribution penalty tax, if the distribution is taken in connection with federal disasters declared between January 1, 2018 and 60 days after enactment.
• Prohibits making defined contribution plan loans through prepaid credit cards or similar arrangements.
SECURE Act Changes Effective for Distributions Made After December 31, 2019
• Adds an option for penalty-free withdrawals from defined contribution plan accounts of up to $5,000 (per individual) within one year after birth or adoption of a qualifying child, with an option to "repay" qualified birth or adoption distributions under certain circumstances.
• Delays the "required beginning age" for minimum required distributions from qualified retirement plans from age 70½ to age 72 with respect to individuals who attain age 70½ after December 31, 2019.
• Caps the period to "stretch" post-death defined contribution plan distributions to 10 years (with exceptions for surviving spouses, minor children, disabled or chronically ill persons, or any person not more than 10 years younger than the employee). Effective for distributions with respect to employees who die after December 31, 2019 (with a delayed effective date for certain collectively bargained plans).
SECURE Act Changes Effective for Plan Years Beginning After December 31, 2019
• Reduces the earliest age that an employee can receive in-service retirement benefits from a pension plan (*i.e.*, defined benefit, money purchase, or hybrid plan) from age 62 to age 59½.
• Increases the cap on the default contribution rate for qualified automatic contribution arrangements from 10% to 15% (but retains the 10% cap for the first year of participation).
• Eliminates the annual safe harbor notice requirement for nonelective 401(k) safe harbor plans.

• Adds an option to retroactively amend a 401(k) plan to become a nonelective safe harbor plan. If the nonelective contribution is at least 4% of compensation, the amendment could be made up until the end of the next following plan year.
• Allows plan participants invested in lifetime income investment options to take a distribution of the investment without regard to plan distribution restrictions—provided that the investment is no longer authorized to be held under the plan and the distribution is made by a direct transfer to another retirement plan or IRA or by distribution of the annuity contract.
• Increases failure to file Form 5500 penalty to $250 per day (and increases overall cap on penalty to $150,000); increases failure to file Form 8955-SSA penalty to $10 per participant per day (and increases overall cap on penalty to $50,000); increases failure to file notice of change of status to $10 per day (and increases overall cap on penalty to $10,000); increases failure to provide a required withholding notice to $100 for each failure (and increases overall cap on penalty to $50,000). Effective for returns and notices required to be provided after December 31, 2019.
SECURE Act Changes Effective for Taxable Years Beginning After December 31, 2019
• Provides that an employer adopting a qualified retirement plan after the close of a taxable year, but before the employer's tax filing return deadline (including extensions) may treat the plan as having been adopted by the last day of the taxable year.
• Increases tax credits for small employers starting retirement plans and adds tax credits for small employers that include automatic enrollment features in a retirement plan.
• Repeals the ACA excise tax on high-cost group health plans ("Cadillac tax").
SECURE Act Changes Effective for Plan Years Beginning After December 31, 2020
• Requires 401(k) plan sponsors to permit long-term, part-time employees who have at least 500 hours of service (but less than 1,000 hours) in each of the immediately preceding three consecutive 12-month periods to participate in the 401(k) plan for the sole purpose of making elective deferrals. Hours of service during 12-month periods beginning before January 1, 2021, are not taken into account for this rule.
• Permits unrelated employers to participate in an "open" multiple employer retirement plan (eliminating the current employment "nexus" rule) and generally eliminates the "one bad apple" rule under which a tax-qualification violation by one participating employer could potentially disqualify the entire multiple employer plan.

SECURE Act Changes Effective for Plan Years Beginning After December 31, 2021
• Directs the Department of Treasury and the Department of Labor to modify annual reporting rules to permit certain related individual account or defined contribution plans (*i.e.*, plans with the same trustee, fiduciary, administrator, plan year, and investment selections) to file a consolidated Form 5500. Applies to returns and reports for plan years beginning after December 31, 2021.
SECURE Act Changes – Special Effective Dates
• Requires that the Department of Treasury issue guidance within six months of enactment providing that individual 403(b) custodial accounts may be distributed in-kind to a participant or beneficiary in the event of a 403(b) plan termination, with the guidance retroactively effective for taxable years beginning after December 31, 2008.
• Clarifies which individuals may be covered by plans maintained by church-controlled organizations. (Applies to years beginning before, on, or after enactment.)
• Provides that difficulty of care payments are included as compensation for purposes of making contributions to a defined contribution plan. (Applies to plan years beginning after December 31, 2015.)
• Provides alternative minimum funding standards for certain community newspaper plans. (Applies to plan years ending after December 31, 2017.)
• Modifies the calculation of PBGC premiums for cooperative and small employer charity (CSEC) plans. (Applies to plan years beginning after December 31, 2018.)
• Repeals the ACA annual fee on health insurance providers. (Applies to calendar years beginning after December 31, 2020.)
• Requires defined contribution plan sponsors to provide participants with an annual estimate of monthly income that a participant could receive in retirement if an annuity were purchased with his or her plan account balance—regardless of whether an annuity distribution option is available under the plan. (Applies twelve months after the release of DOL guidance.)

Note: In addition to the SECURE Act, this summary includes provisions applicable to employer-sponsored retirement and health benefit plans in the Further Consolidated Appropriations Act, 2020.