Legislative Intelligence Special Edition from the Investments & Wealth Institute SECURE Act 2019 Enacted into Law Dec. 20, 2019

Welcome to this special edition of the Investments & Wealth Institute *Legislative Intelligence*. President Trump signed the SECURE Act into law Dec. 20, 2019 as part of the government's spending bill. The SECURE Act legislation — which stands for "Setting Every Community Up for Retirement Enhancement" — puts into place numerous provisions intended to strengthen retirement security. The Investments & Wealth Institute has distilled the new legislation into an executive summary below.

Executive Summary

Setting Every Community Up for Retirement Act of 2019[1] (Part of H.R. 1865, Further Consolidated Appropriations Act, 2020)

(Updated 12/19/19)

Note: SECURE Act provisions start on p. 1532 of legislation.

I. Sec. 101. **Multiple and pooled employer plans.** (p.1533)
   a. Allow two or more companies that are not in the same industry to offer defined contribution (DC) plans or individual retirement accounts (IRAs) to workers through a plan provider, which would act as the plan fiduciary.
   b. Provides relief from the "one bad apple" rule by not treating plan as failed due to Employee Retirement Income Security Act of 1974 (ERISA) violation by a single employer.
   c. Provision is similar to a Department of Labor rule for association retirement plans as published in the *Federal Register* on July 31, 2019.
   d. Changes effective for plan years after 2021.

II. Sec. 102. **Automatic Enrollment Escalation.** (p. 1555)
   a. Allows plan sponsors to automatically enroll workers to escalate elective contributions up to 15 percent, instead of 10 percent, after first year.
   b. Effective for plan years after 2019.

III. Sec. 104. **Small Employers.** (p. 1559)
   a. Increases tax credit for plan start-up costs.
   b. Applies to employers with 100 or fewer employees who received at least $5,000 in compensation in previous year.
   c. Effective for plan years after 2019.

IV. Sec. 105. (p. 1560).

[1] The information provided here is not all-inclusive and provides only a summary of selected SECURE Act amendments of interest to Institute members. The SECURE Act was attached as an amendment to H.R. 1865, a bill funding the U.S. government that was approved by the U.S. Congress and signed into law by President Donald Trump on December 20, 2019. This executive summary should not be read as legal or compliance advice. Consult with your compliance professional for further details.

   a. Increases tax credit for auto-enrollment of workers to $500 for up to three years.
   b. Effective for plan years after 2019.

V. Sec. 106. **Graduate School Compensation.** (p. 1562)
   a. For purposes of determining IRA contribution amounts, student aid paid to graduate or postdoctoral students is deemed "compensation."
   b. Effective for tax years beginning in 2020.

VI. Sec. 107. **IRA Contributions.** (p. 1563)
   a. Eliminates prohibition on contributions to traditional IRAs after account owners turn age 70½.
   b. Effective for tax years beginning in 2020.

VII. Sec. 108. **Credit Card Loans.** (p. 1564)
   a. DC plan loans made through credit cards banned after December 20, 2019.

VIII. Sec. 109. **Portability of Annuity Contracts.** (p. 1565)
   a. Allows transfer of participant annuity contracts from one qualified plan to another when investment is no longer authorized by the original plan.
   b. Effective for plan years beginning in 2020.

IX. Sec. 110. **Terminated 403(b) Accounts.** (p. 1572)
   a. Department of the Treasury must issue guidance on transfer of individual accounts from terminated 403(b) plans to tax-deferred custodial accounts.
   b. Guidance to be issued within six months after enactment and retroactive to tax years beginning in 2009.

X. Sec. 112. **Part-Time Workers.** (p. 1574)
   a. Permits plan eligibility for long-term part-time workers. Previously excluded employees who worked fewer than 1,000 hours per year.
      i. Now permits employees who worked at least 500 hours each year for three consecutive years.
      ii. Employers would not be required to make matching contributions.
   b. Effective for plan years beginning in 2021; not applicable to union plans.

XI. Sec. 113. **Withdrawals for Birth of Child or Adoption.** (p. 1578)
   a. Allows penalty-free withdrawals from DC plans up to $5,000 in the year following birth or adoption of a child younger than age 18.
   b. Distribution may be repaid to participant account.
   c. Effective for distributions made beginning in 2020.

XII. Sec. 114. **Increase in Age for Required Minimum Distributions**. (p. 1584)
   a. Age at which individuals must take required minimum distributions (RMD) from certain retirement accounts increased by 18 months to age 72.
   b. Effective for RMDs of individuals who attain age 70½ after December 31, 2019.

XIII. Sec. 203. **Disclosure of Account Balance in Annuity Stream.** (p. 1603)
   a. Once a year DC plans must disclose individual participants' "lifetime income disclosure income stream" based on assumptions to be specified by the Department of Labor (DOL).
      i. Assumptions include a qualified joint and survivor annuity (spouse of equal age) and
      ii. Single life annuity
      iii. Explains disclosure in an illustration
         1. Total benefits will depend on numerous factors and may vary substantially from illustration
         2. Explains assumptions used in illustration

   b. Disclosure rule issued by DOL within year of enactment of SECURE Act.
   c. Plan sponsor not liable for disclosure made in accordance with regulations.
   d. Effective one year after rule issuance by DOL.

XIV. Sec. 204. **Safe Harbor for Selection of Annuity Provider.** (p. 1609)
   a. Fiduciary safe harbor established for plan selection of annuity or other guaranteed retirement income provider.
      i. Must engage in "objective, thorough, and analytical search" at time of selection, including
         1. Provider's financial capability to make payments
         2. Costs, including fees and commissions, in light of benefits, product features, and administrative services; and
      ii. Based on written representations of insurer, including
         1. appropriate licensure status and
         2. meets state insurance commissioner requirements
      iii. Plan fiduciary is not required to select lowest-cost contract.
      iv. Fiduciary must periodically review provider selection decision

XV. Sec. 302. **Expansion of 529 Plan to Apprenticeships, Loan Repayments.** (p. 1638)
   a. Qualified expenses amended to include fees, books, etc., for plan beneficiary enrolled in apprenticeship programs registered with DOL.
   b. Distributions may also be used to repay qualified education loans up to $10,000.
   c. Effective for distributions made beginning in 2020.

XVI. Sec. 401. **Modifications to 'Stretch IRAs.'** (p. 1640)
   a. In general, distributions from DC plans and IRA account balances to beneficiaries must be made within 10 years after death of participant or IRA owner.
   b. Exceptions to 10-year requirement include lifetime distributions to the following beneficiaries: spouse, disabled or chronically ill, no more than 10 years younger than account owner, or minor child.
   c. Effective to participant/account owners who die after December 31, 2019.

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