



Provisions of the Secure Act Affecting Tax Qualified Retirement Plans [Updated as of: February 24, 2020]

Signed into law on December 20, 2019, the Setting Every Community Up for Retirement Enhancement (SECURE) Act is the most comprehensive piece of U.S. retirement legislation in more than a decade. The new law makes major changes to rules governing retirement savings generally, adopts accompanying administrative improvements, and includes a series of revenue-related provisions that together affect employer-sponsored retirement plans (e.g., 401(k) plans) and individual retirement accounts (IRAs) alike. The SECURE Act is organized into four parts or titles: provisions that expand benefits for retirement savings, administrative improvements, certain other benefits, and revenue provisions. This chart summarizes the law's provisions affecting tax qualified retirement plans; reports on regulations and other guidance implementing the law; and tracks the contents and required dates of plan amendments.

The SECURE Act is part of the Further Consolidated Appropriations Act, 2020 (the "Act"). Unless otherwise specified, the references to Section number set out below are to Division O of the Act.

Act Section	Explanation of Provision	Effective Date	Plan Amendment Required By	Agency Guidance
TITLE I: Expanding and Preserving Retirement Savings				
Section 101: Multiple employer plans; pooled employer plans.	Under prior law, a qualification failure by one employer in a multiple employer plan can disqualify the <i>entire</i> plan—the "one bad apple" rule. The provision directs the Treasury Department to establish a mechanism whereby plans can avoid the application of the one bad apple rule.	Effective for plan years commencing after December 31, 2020		Not yet issued
Section 101: Multiple employer plans; pooled employer plans.	Prior law also limited the ability of unrelated employers to establish or join "multiple employer plans" (or "MEPs"). The provision allows employers to participate in MEP-like arrangements referred to as "pooled employer plans," and treats them as single plans for ERISA purposes. A pooled employer plan is a qualified defined contribution plan or IRA maintained by a designated "pooled plan provider."	Effective for plan years commencing after December 31, 2020		Not yet issued
Section 102: Increase in 10 Percent Cap for Automatic Enrollment Safe Harbor After 1 st Plan Year	The provision increases the top auto enrollment safe harbor cap from 10 to 15 percent of pay after the first plan year of participation.	Effective for plan years commencing after December 31, 2019		Not yet issued

Section 103: Rules Relating to Election of Safe Harbor 401(k) Status	Simplification of safe harbor 401(k) rules. The provision (i) eliminates the safe harbor notice requirement for the non-elective contribution safe harbor; and (ii) permits amendments to nonelective status at any time before the 30th day before the close of the plan year, or later if the nonelective contribution is increased to 4% and the plan is amended no later than the last day of the following plan year.	Effective for plan years commencing after December 31, 2019		Not yet issued
Sections 104: Increase in Credit Limitation for Small Employer Pension Plan Start-up Costs	Section 45E permits "eligible employers" to take a general business credit of 50% of up to \$1,000 of "qualified startup costs" paid or incurred in the first credit year and each of the immediately following two tax years. "Eligible employer" has the meaning designated in § 408(p)(2)(C)(i), i.e., with respect to any year, an employer that has no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding year. Qualified startup costs include any ordinary and necessary expenses paid or incurred by an eligible employer in connection with the establishment or administration of an eligible plan or the retirement-related education of employees with respect to the plan. An eligible plan must have at least one participant who is not a highly compensated employee.	Effective for tax years commencing after December 31, 2019		Not yet issued
Section 105: Small Employer Automatic Enrollment Credit	The provision provides small employers (i.e., employers with no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding year) with a \$500 annual auto-enrollment credit during a 3-year credit period.	Effective for tax years commencing after December 31, 2019		Not yet issued
Section 108: Qualified employer plans prohibited from making loans through credit cards and other similar arrangements.	The provision bars plan loans through credit cards or similar arrangements to ensure that plan loans are not used for routine or small purchases, thereby preserving retirement savings.	Applies to loans made after the date of enactment.		Not yet issued
Section 109: Portability of lifetime income options	The provision allows qualified defined contribution plans, 403(b) plans, and governmental 457(b) plans to make a direct trustee-to-trustee transfer to another employer-sponsored retirement plan or IRA of lifetime income investments or distributions of a lifetime income investment in the form of a qualified plan distribution annuity, if a lifetime income investment is no longer authorized to be held as an investment option under the plan.	Effective for plan years beginning after December 31, 2019		Not yet issued

Section 110: Treatment of custodial accounts on termination of section 403(b) plans	The provision directs the Treasury Department to issue guidance under which if an employer terminates a 403(b) custodial account, the distribution needed to effectuate the plan termination may be the distribution of an individual custodial account in kind to a participant or beneficiary. The individual custodial account must be maintained on a tax-deferred basis as a 403(b) custodial account until paid out, subject to the 403(b) rules in effect at the time that the individual custodial account is distributed.	The Treasury guidance must be issued not later than six months after the date of the law's enactment, and must be effective for taxable years beginning after December 31, 2008.		Not yet issued
Section 112: Qualified cash or deferred arrangements must allow long-term employees working more than 500 but less than 1,000 hours per year to participate	The provision requires that, other than in the case of collectively bargained plans, employers maintaining a 401(k) plan must adopt a dual eligibility requirement under which an employee must complete either a one year of service requirement (with the 1,000-hour rule) or three consecutive years of service where the employee completes at least 500 hours of service. In the case of employees who are eligible solely by reason of the latter new rule, the employer may elect to exclude such employees from testing under the nondiscrimination and coverage rules, and from the application of the top-heavy rules.	Applies to plan years beginning after December 31, 2020; 12-month periods beginning before January 1, 2021 shall not be taken into account		Not yet issued
Section 113: Penalty-free withdrawals from retirement plans for individuals in case of birth of child or adoption	The provision allows penalty-free withdrawals from retirement plans up to \$5,000 for individuals' expenses in the case of birth or adoption.	Applies to distributions made after December 31, 2019		Not yet issued
Section 114: Increase in age for required beginning date for mandatory distributions.	The provision increases the required minimum distribution age from 70 ½ to 72.	Applies to distributions made after December 31, 2019, for individuals who attain age 70 ½ after such date		Not yet issued
TITLE II: Administrative Improvements				
Section 201: Plan adopted by filing due date for year may be treated as in effect as of close of year.	The provision permits businesses to treat qualified retirement plans adopted before the due date (including extensions) of the tax return for the taxable year to treat the plan as having been adopted as of the last day of the taxable year.	Applies to plans adopted for tax years beginning after December 31, 2019		Not yet issued
Section 202: Combined annual report for group of plans	The provision directs the Labor Department to enable the filing of a consolidated Form 5500 for defined contribution plans that have the same trustee, the same named fiduciary, and the same administrator, with the same plan year, and providing the same investments or investment options to participants and beneficiaries.	Implemented no later than January 1, 2022; shall apply to returns/reports for plan years after December 31, 2021		Not yet issued

Section 203: Disclosure regarding lifetime income	The provision requires benefit statements provided to defined contribution plan participants to include a lifetime income disclosure at least once during any 12-month period. The disclosure must illustrate the monthly payments the participant would receive if the total account balance were used to provide lifetime income streams, including a qualified joint and survivor annuity for the participant and the participant's surviving spouse and a single life annuity.	Applies to pension benefit statements furnished more than 12 months after DOL issues interim final rules, the model disclosure and assumptions		Not yet issued
Section 204: Fiduciary safe harbor for selection of lifetime income provider	Under the provision, plan fiduciaries are afforded an optional safe harbor to satisfy the prudence requirement with respect to the selection of insurers for a guaranteed retirement income contract and are protected from liability for any losses that may result to the participant or beneficiary due to an insurer's inability in the future to satisfy its financial obligations under the terms of the contract.	Effective as of December 20, 2019		Not yet issued
Section 205: Modification of nondiscrimination rules to protect older, longer service participants	The provision modifies the nondiscrimination rules with respect to closed plans to permit existing participants to continue to accrue benefits.	Effective as of date of enactment		Not yet issued
TITLE IV: Revenue Provisions				
Section 401: Modification of required distribution rules for designated beneficiaries	The provision modifies the required minimum distribution rules with respect to defined contribution plans (and IRAs) upon the death of the participant (or account owner). Distributions to individuals other than the surviving spouse of the employee (or IRA owner), disabled or chronically ill individuals, individuals who are not more than 10 years younger than the employee (or IRA owner), or child of the employee (or IRA owner) who has not reached the age of majority are generally required to be distributed by the end of the tenth calendar year following the year of the employee or IRA owner's death.	Applies to distributions with respect to employees who die after December 31, 2019		Rev. Procedure 2020-6, 2020-7 I.R.B. Jan. 24, 2020). IRA trustees and custodians have until April 15 to notify certain account holders that no RMD is due for 2020. A trustee or custodian that sent out incorrect letters of instruction to customers have until April 15 to issue corrected letters.
Section 402: Increase in penalty for failure to file.	The provision increases the failure to file penalty to the lesser of \$435 or 100% of the amount of the tax due.	Applies to returns due after December 31, 2019		Not yet issued
Section 403: Increased penalties for failure to file retirement plan returns.	The provision modifies the failure to file penalties for retirement plan returns. The Form 5500 penalty would be modified to \$250 per day, not to exceed \$150,000. Failure to file a registration statement would incur a penalty of \$10 per participant per day, not to exceed \$50,000. Failure to file a required notification of change would result in a penalty of \$10 per day, not to exceed \$10,000 for any failure. Failure to provide a required withholding notice results in a penalty of \$100 for each failure, not to exceed \$50,000 for all failures during any calendar year.	Applies to forms required to be filed, and notices required to be provided after December 31, 2019		Not yet issued

Miscellaneous Items

Section 104, Division M of the Act: Reduction in the Minimum Age for Allowable In-Service distributions	The provision reduces the age for distributions from qualified defined benefit plans and governmental 457(b) plans to age 59½.	Effective for plan years beginning after December 31, 2019		Not yet issued
Section 202, Division Q of the Act: Special Disaster-Related Rules for Use of Retirement Funds	The provision enables plans to make qualified disaster distributions to participants who lived in a presidentially declared disaster area. Distributions are capped at \$100,000 per disaster across all plans in the plan sponsor's controlled group. Qualified disaster distributions are exempt from the 10 percent penalty for distributions taken before age 59 1/2, and participants receiving qualified disaster distributions are permitted to spread taxes on the distribution over three years. Participants can also repay all or a portion of their disaster distribution to the plan that issued it within three years or can roll it over to another retirement plan or an IRA.	Applies to participants who lived in a qualified disaster area beginning after 2017 and ending 60 days after the date of enactment.		