Who CARES about the SECURE Act?

A Summary of Retirement Plan Rules

A Short Roadmap

- Two key pieces of legislation made significant changes to the qualified retirement plan landscape –
  – Setting Every Community Up for Retirement Enhancement Act of 2019 (the “**SECURE Act**”)
  – Coronavirus Act, Relief, and Economic Security Act of 2020 (the “**CARES Act**”)

SECURE Act Highlights

- The SECURE Act is potentially the most significant piece of retirement plan legislation since the Pension Protection Act of 2006
- The Act was passed by the Congress on December 19, 2019 and was signed into law by President Trump on December 20, 2019
- The Act is intended to expand and modernize the retirement system
- Many changes are immediate and most retirement plans will need to be amended to reflect the provisions of the Act
  - The Act provides for a remedial amendment period running through the end of the 2022 plan year

Key Change – Required Minimum Distributions

- **Prior Rule:** Required minimum distributions must begin on April 1 of the year following the later of the calendar year in which the individual reaches age 70½ or retires
- **SECURE Act Rule:** Required minimum distributions must begin on April 1 of the year following the later of the calendar year in which the individual reaches age ***72*** or retires
  - This new rule applies with respect to distributions required to be made to individuals who attain age 70½ after December 31, 2019
- In addition, the SECURE Act repeals the maximum age (previously, 70½) for contributing to a Traditional IRA

Key Change – Increase Penalties for Failures

- To pay for certain of its other changes, the SECURE Act significantly raises many statutory penalties for failure to comply with various notice and reporting obligations. For instance:
  - **Prior Rule:** Failure to timely file the Form 5500 resulted in a $25 per day penalty (capped at $15,000)
  - **SECURE Act Rule:** Failure to timely file the Form 5500 results in a ***$250 per day penalty (capped at $150,000)***
- This new penalty structure applies with respect to returns required to be filed after December 31, 2019

Key Change – Automatic Enrollment Cap

- **Prior Rule:** Qualified Automatic Contribution Arrangements ("QACA") required an automatic increase of elective deferrals to be capped at 10% of compensation.
- **SECURE Act Rule:** QACAs require an automatic increase of elective deferrals to be capped at ***15%*** of compensation.

Key Change – Frozen Plan Relief

- Defined benefit plans that are frozen to new participants often face nondiscrimination issues over time
  - No new participants, attrition of participants, and the aging of more tenured participants may result in more favorable treatment of highly compensated employees
- The SECURE Act provides permanent nondiscrimination testing relief for benefit accruals and for benefits, rights and features testing for such frozen plans

Key Change – Long-Term, Part-Time Employees

- **Prior Rule:** A plan generally may exclude from participation employees not age 21 who have not completed one Year of Service (*i.e.*, 1,000 Hours of Service).
- **SECURE Act Rule:** A plan must permit long-term, part-time workers (*i.e.*, employees who work at least 500 hours per year for at least three consecutive years) to participate.
  - Employers may exclude such employees from employer contributions and for purposes of nondiscrimination, coverage and top-heavy testing
  - This rule is effective for plan years beginning after December 31, 2020

Other Key Changes

- Increases Small Employer Automatic Enrollment Tax Credit
- Increases Small Employer Pension Plan Startup Tax Credit
- Prohibits Credit Card Access to 401(k) Plan Loans
- Expands Access to Section 529 Plans
- Adjusts the Timing Requirements for Adopting New Plans
- Provides for Withdrawals for Birth or Adoption
- Adjusts Reporting Obligations for Certain Group Plans
- Removes Stretch IRAs by Requiring Distributions Within 10 Years

CARES Act Highlights

- Congress passed and President Trump signed into law the CARES Act on March 27, 2020 (*e.g., one-thousand years ago*)
- As part of its $2 trillion economic relief program, the CARES Act contained special provisions aimed at retirement plans
- Plan sponsors have until at least the last day of the first plan year beginning on or after January 1, 2022 to amend their plans to implement the changes set out in the CARES Act
  - *e.g.*, December 31, 2022 for calendar year plans

Key Provision – Hardship Distributions Pt. I

- The CARES Act **expanded access to hardship distributions** from qualified retirement plans by **waiving the 10% early withdrawal penalty** on coronavirus-related distributions (“CRD”) up to $100,000
  - The waiver applies until December 31, 2020 and only to certain participants
  - CRDs are includible in income ratably over a three-year period unless the participant elects to include such amounts in income earlier
  - Participants are entitled, but not required, to repay all or a portion of the CRD for a period of up to three years from the date he or she received the distribution

Key Provisions – Hardship Distributions Pt. II

- The hardship distribution relief is only available to participants:
  - Who are diagnosed with COVID-19
  - Whose spouse or dependent is diagnosed with COVID-19
  - Who experiences adverse financial consequences as a result of –
    - Being quarantined, furloughed, laid off or having work hours reduced due to COVID-19
    - Being unable to work due to lack of child care due to COVID-19;
    - Being unable to work due to the closing or reduction of hours of a business operated by the individuals due to COVID-19
    - Other factors determined by the Secretary of Treasury
  - Recent IRS guidance expands this definition to include adverse impact on a member of the participant's household and to include reductions in pay or self-employment income due to COVID-19, the rescission of a job offer, and the delay of a job start date
- Plan administrators may rely on employee certifications regarding eligibility to receive a CRD

Key Provision – Plan Loans

- The CARES Act increased qualified retirement plan loan limits
  - **General Rule:** A participant can receive a loan equal to the lesser of $50,000 or 50% of the vested account balance.
  - **CARES Act Rule:** For a period of 180 days following the enactment of the CARES Act, a participant can receive a loan equal to the lesser of $100,000 or 100% of the vested account balance.
- A CRD-eligible participant with an outstanding qualified plan loan due before December 31, 2020 may delay repayment for one year
  - This delay is permitted even if it would exceed the otherwise applicable five-year plan loan limit.
  - Repayments must be adjusted to reflect the new due date and accrued interest.

Key Provisions – Required Minimum Distributions

- The CARES Act waived required minimum distributions for 2020
  - This waiver applies to defined contribution plans, including Section 403(b) plans, Section 457(b) plans and IRAs
  - The waiver impacts distributions that are required to be made in calendar year 2020 and those distributions attributable to 2019 that have not yet been made

Key Provision – Relief for Pension Plans

- The CARES Act delayed required minimum contributions for single employer defined benefit plans
  - Any minimum required contribution otherwise due in 2020 is now postponed until January 1, 2021
  - On that date, the 2020 required minimum contributions will be due, plus interest
- Plan sponsors may rely on the plan's funded status for the last plan year ending before January 1, 2020 to determined whether the funding-based restrictions under Code Section 436 apply.
  - This relief allows participants to continue to receive lump sum and other accelerated distributions and the plan to bypass restrictions on future benefit accruals even if the plan's funding status significantly declines in 2020 due to the COVID-19 crisis

Future Legislation…