



Summary of Provisions in the SECURE Act

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The Setting Every Community Up for Retirement Enhancement (SECURE) Act, is one of several bills that has been passed by the House and included as part of a single overall year-end government spending package. Without this spending bill the federal government would have been pushed into a shutdown on December 20, 2019. The SECURE Act, and other included legislation, includes a number of provisions. This article summarizes the changes which will have the greatest impact and will affect the largest numbers of people. IRS is planning to issue guidance to clarify certain specific provisions of the Act.

Date of Enactment

Effective on the Date of Enactment, retirement plans will be prohibited from allowing credit card advances of plan loan funds.

Plan Years Beginning after December 31, 2019

Several provisions will be effective for Plan Years beginning after December 31, 2019. For plans using a calendar year the following provisions will be effective January 1, 2020.

- For Qualified Automatic Contribution Arrangements, or QACAs, after the first year the 10% of compensation cap is raised to 15%.
- Safe Harbor Notice Requirements for 401(k) plans are eliminated for plans that fund Employer nonelective contributions. EACA / QACA notices, however, are still required.
- After the beginning of a Plan Year, Employers are permitted to adopt or add Safe Harbor 401(k) features with a 3% (or more) Employer-funded nonelective contribution, up until 30 days before the plan's year end (Dec. 2 for calendar plan year).
- Employers are permitted to adopt or add Safe Harbor 401(k) features with a 4% (or more) Employer-funded nonelective contribution up to the close of the following plan year. (Such a plan for calendar year 2020 could be adopted as late as December 31, 2021.) (This can be done when a plan has failed ADP/ACP testing.)
- A provision from the Bipartisan American Miners Act (part of the overall year-end package) provides that for pension plans the minimum age for voluntary in-service distributions is lowered from 62 to 59½.

Taxable Years Beginning after December 31, 2019

The bill includes two Employer Income Tax Credit provisions for Employers with fewer than 100 employees, and with at least one eligible non-highly compensated employee.

The first provision is for adopting a new plan and is limited to 50% of costs for the first 3 years. It allows a Tax Credit for the greater of:

1. \$500, or
2. \$250 per employee, up to a limit of \$5,000.



For plans with auto-enrollment, or adding auto-enrollment, the bill adds a \$500 per year Employer Tax Credit for up to 3 years. Employers may qualify for both credits.

The bill repeals the prohibition of contributing to IRAs after age 70½.

Retirement plan withdrawals of up to \$5,000 to each parent for childbirth or adoption expenses are now allowable. For employees below age 59½ the 10% penalty is waived.

For employees / participants attaining age 70½ after 2019, the age threshold for Required Minimum Distributions will change from 70½ to 72.

The bill allows the initial adoption of a retirement plan as late as the Employer tax return due date, including extensions, yet treated as adopted the last day of the tax year (previous year).

For participants who die after 2019 with a non-spousal beneficiary (an adult child, for example) the participant's account is required to be distributed by the end of the 10th calendar year following year of death, rather than using life expectancies, as in the past.

Calendar Years after December 31, 2019

IRS late filing penalties for 5500-series forms are increased from \$25 per day to \$250 per day. Other late filing penalties are also increased.

Plan Years Beginning after December 31, 2020

- For 401(k) plans, in addition to the longstanding 1000-hour per year maximum for eligibility, the bill provides that non-union Employees working over 500 hours per year for 3 consecutive years must be allowed to participate in the 401(k) plan. Employers may disregard these employees for testing (Coverage, Nondiscrimination and Top-Heavy).
- The SECURE Act provides that Employers in a Multiple Employer Plan (MEP) who satisfy the current "commonality and control" requirements will no longer be subject to the "one bad apple" rule under which one tainted plan would affect all plans in the group. The Act introduces Pooled Employer Plans (PEPs) which are MEPs that don't fulfill the commonality and control requirements (formerly called Open MEPs). PEP Providers are required to be Named Fiduciaries and §3(16) Administrators and are required to register with the Labor Dept. and the IRS.

Plan Amendments to be Required

The provisions of the SECURE Act will be in a Remedial Amendment Period until the plan's 2022 plan year. No plan amendments for this Act will be required prior to 2022 unless a pension plan wishes to implement 59½ in-service distributions; this requires an amendment by the effective year.

The SECURE Act also includes other changes. Many of these will be beneficial toward the goal of *building retirement security*.

Please contact your Client Service Manager or Regional Sales Director at JULY if you have questions or would like more information.