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SECURE Act Modifies Retirement Plan Distribution Rules

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New legislation impacting retirement plans and their participants was signed into law by President Trump on December 20, 2019. The Setting Every Community Up for Retirement Enhancement Act (the “SECURE Act”) is one of the most significant laws affecting retirement plans during the past decade. The Act includes numerous changes for retirement plans, including 401(k) eligibility rules, safe harbor plan, lifetime income options, required minimum distribution, and 5500 annual reports. Several provisions of the Act, as summarized below, impact distributions and withdrawals from retirement plans effective January 1, 2020. Plan Sponsors need to act now to conform their plan administration and participant communications materials to the new rules. Plan document amendments are also necessary.

- **Increased Age for RMDs.** Under prior law, non 5%-owners were permitted to defer distribution from tax-qualified retirement plans until the later of the April 1 of the calendar year following the calendar year in which the employee attains age 70½ or the calendar year of retirement. Five percent owners had to begin distributions by April 1 of the calendar year following the calendar year in which they attained age 70½. The SECURE Act revises this rule by raising the age at which Required Minimum Distributions (“RMDs”) must begin to age 72 (for all tax-qualified plans and IRAs). The new rule applies to participants who turn 70½ after 2019 (born after June 30, 1949). A participant who attained 70½ before 2020 is subject to the prior rule. Defined benefit plan administrators should note that for employees working past age 70½, there is no change to the required actuarial adjustment for delayed payment. *Effective January 1, 2020.*
- **Required Minimum Distributions Accelerated for Designated Beneficiaries.** In the case of 401(a) defined contribution plans, 403(a) annuity plans, 403(b) annuity contracts, and governmental deferred compensation plans under 457

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(b) (and IRAs), if a participant dies before receiving the entire account balance, the participant's entire account balance must be distributed within 10 years of the participant's date of death. A beneficiary is no longer permitted to take distributions over his or her lifetime, except in the case of (i) a surviving spouse; (ii) a child of the participant who has not reached majority; (iii) a chronically ill individual; and (iv) an individual who is no more than 10 years younger than the participant (referred to as "eligible designated beneficiaries"). Non-designated beneficiaries are still subject to the 5-year payout rule. We provide a more detailed discussion of the new RMD rules here: **New Retirement Distribution Rules Begin in 2020: Planning Considerations and Opportunities.**

Effective for distributions with respect to participants who die after December 31, 2019. A delayed effective date applies for collectively bargained and governmental plans.

- **In-service Withdrawals for Birth or Adoption.** Defined contribution plans (and IRAs) may now permit participants to take penalty-free in-service withdrawals in the case of a qualified birth or adoption, up to a maximum of \$5,000. Participants have a year to take the withdrawal after the birth or adoption of a child. Amounts withdrawn are not eligible for rollover, and, although subject to income tax, are not subject to mandatory 20% withholding. The rule applies to 401(a) defined contribution plans, 403(a) annuity plans, 403(b) annuity contracts, and governmental deferred compensation plans under 457(b). Plan sponsors may prefer to delay implementing the new rule until after the IRS issues guidance. Also, plan providers will need time to update systems and procedures to implement the new feature. *Effective January 1, 2020.*
- **Portability of Lifetime Income Option/Annuity Contracts.** Defined contribution plans, 401(k) plans, 403(b) custodial accounts, and governmental deferred compensation plans under 457(b) that offer an annuity or similar contract providing for lifetime income as an investment option, may allow participants to take an in-service distribution of such annuity contract. Such a distribution, however, is limited to situations where the lifetime income option is about to be removed as an available investment option under the plan. The plan may allow participants to take an in-service distribution of such lifetime income option/annuity contract within 90 days before the date the annuity contract is no longer allowed as an investment option under the plan. This applies even if the participant is not otherwise entitled to a distribution at the time. The distribution must be in the form of a direct trustee-to-trustee transfer to an IRA or other tax-qualified retirement plan or as a distribution of the annuity contract to the participant. *Effective for plan years beginning after December 31, 2019.*

Plan Sponsors need to consider necessary changes to their plan administration and participant communication materials concerning in-service withdrawals and benefit distributions. Plan Documents will need to be amended to reflect these changes by January 1, 2022, or such later date as the IRS may prescribe. For governmental and collectively bargained plans, the amendment deadline is stated as January 1, 2024. Plan Sponsors should start talking with their service providers about the new rules and how best to achieve compliance. Updating distributions forms, beneficiary designation forms, notices, plan documents, and SPDs, as well as preparing participant education materials for these changes should be a priority for Plan Sponsors and plan service providers.

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