



SLEVIN & HART, P.C.

Benefits Update

SECURE Act Makes Important Changes for Retirement Plans

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On December 20, 2019, the Setting Every Community Up for Retirement Enhancement (“SECURE”) Act was signed into law as part of a larger bipartisan appropriations bill. The SECURE Act (“Act”) makes numerous changes to the rules governing defined benefit and defined contribution retirement plans. Changes are generally effective starting in 2020, although several provisions have delayed effective dates, in some cases pending further guidance. Below is a brief summary of the significant provisions of the new law.

Required Minimum Distributions

The Act makes substantial changes to when participants in defined benefit and defined contribution retirement plans must begin taking their benefits. Currently, most plans follow the definition of “required beginning date” in the Internal Revenue Code and require that participants who are not actively working begin their benefit as of the April 1 of the calendar year following the year in which they reach age 70½. Under the Act, the age for determining a participant’s required beginning date is increased from age 70½ to age 72 for participants who reach age 70½ after December 31, 2019. Consequently, for participants who attain age 70 ½ in 2020 or later, the plans will have an extra year, or in some cases two years, before they are required to begin paying retirement benefits to participants over the age of 70½. Further guidance is expected on how the new rule applies to participants who reached age 70½ before the law became effective, but who would have a later required beginning date under the new rule. The IRS also will need to provide guidance on whether plans that do not use the Code definition of “required beginning date” will have the option of changing the plan’s definition to the new rule (and delaying mandatory distributions) without causing an impermissible cutback.

The Act also reduces the time period applicable to post-death distributions to certain beneficiaries from defined contribution plans by requiring that all benefits be distributed within ten years, rather than over the beneficiary’s lifetime, as permitted under the current rules. The lifetime distribution option remains available to a beneficiary who is a surviving spouse, minor child, disabled or chronically ill person, or a person who is within 10 years of the participant’s age.

401(k) Plan Eligibility for Employee Elective Salary Deferrals

Current law requires a 401(k) plan to permit employees to begin participating and making employee salary deferrals once they complete at least 1,000 hours of service in a 12-month

period, and permits plans to exclude employees from participation if they do not reach that threshold. For 401(k) plans, the Act requires that the plan permit employees to participate in the plan if they work at least 500 hours but less than 1,000 hours per year in each of three consecutive 12-month periods. (This new rule does not apply to defined benefit plans or employer contributions of any type to a defined contribution plan, such as employer matching or profit-sharing contributions.) There also is an exception for collectively bargained participants, who will remain subject to the 1,000-hour rule. Consequently, 401(k) plans that cover both bargained and non-bargained employees will need to review the eligibility rules for non-bargained employees to make salary deferrals, and plans may wish to consider adopting the 500-hour rule for all participants to simplify plan administration. This change is effective for plan years starting in 2021, but only hours of service after the effective date are counted, so participants affected by the rule will not become eligible until 2024.

401(k) Plan Safe Harbor Rules

The Act provides more flexibility to plan sponsors that wish to adopt a safe harbor to avoid nondiscrimination testing. Previously, in order to avoid nondiscrimination testing based on an employer nonelective contribution of 3% or more, the safe harbor required an annual notice to participants at least 30 days before the start of each plan year. Under the Act, the annual notice is no longer required and an employer may elect the safe harbor by making a 3% contribution at any time up to 30 days before the end of the plan year. In addition, a plan sponsor may adopt the safe harbor even after the 30-day window by making a 4% contribution and amending the plan by the end of the following plan year. For plans that satisfy the safe harbor through employer matching contributions, the rules, including the annual notice requirement, remain the same.

Lifetime Income Options

The Act does not require defined contribution plans to begin offering annuity options, but it does require plans to provide participants, at least annually, with an estimate of the monthly benefit they would receive if their account were converted to an annuity. The Act directs the Department of Labor to issue a model participant notice for this purpose and to specify the assumptions to be used in calculating estimated monthly benefits. The participant notice requirement does not take effect until one year after this guidance is issued by DOL.

The Act also addresses some of the barriers faced by defined contribution plan sponsors that adopt lifetime income investment options. Specifically, the law creates a limited safe harbor for the selection of an annuity provider, and offers protection to plan trustees in the event the annuity provider becomes financially unable to pay benefits, provided the sponsor engages in an objective, thorough, and analytical search when the provider is selected. Trustees retain responsibility for other aspects of choosing a provider, such as reviewing provider fees. Further, the Act permits the direct rollover of a lifetime income investment to another qualified plan or IRA without penalty.

Distributions on Birth or Adoption

Beginning in 2020, defined contribution plans are permitted, but not required, to offer a penalty-free (but taxable) in-service distribution of up to \$5,000 on account of the birth or adoption of a child. With respect to adoption, qualifying children must be either under age 18 or physically or mentally disabled. The Act permits birth and adoption distributions to be repaid to the plan. Note that these birth or adoption distributions are different from 401(k) hardship distributions and thus are not subject to the hardship distribution requirements.

As noted above, further guidance is expected from the DOL and other agencies that will expand on and clarify the impact of the new law. We will continue to provide clients with analysis as guidance becomes available.

Please contact Slevin & Hart for more information about how the SECURE Act affects your plan.

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