## Setting Every Community Up for Retirement Enhancement (SECURE) Act
### Summary of Major Provisions

| *Item* | *Act Sec.* | *Effective Date* | *New Law* | *Prior Law* |
|---|---|---|---|---|
| **Access to Retirement Plans** | | | | |
| **Automatic Enrollment Safe Harbor Percentage** | 102 | Plan years beginning after 12/31/19 | Same as prior law, but the maximum default rate is increased to 15%. This rate remains at 10% for the initial year that the deemed election applies to a participant. | An annual nondiscrimination actual deferral percentage (ADP) test applies to elective deferrals under a 401(k) plan. The ADP test is deemed to be satisfied if a plan includes certain minimum matching or non-elective contributions under a safe harbor plan design. Unless an employee elects otherwise, he is treated as electing to make elective deferrals at a default rate at least equal to a minimum percentage of compensation stated in the plan. The default rate cannot exceed 10% for any year. |
| **Credit for Small Employer Retirement Plan Expenses** | 105 | Plan years beginning after 12/31/19 | The annual credit limit is increased to $5,000. A $500 credit is added for new small employer plans with an auto-enrollment feature (for up to three years). | A credit is available for qualified start-up costs of eligible small employers that adopt a new eligible plan (IRC Sec. 45E). The credit is available for up to three years beginning with the year the plan is first effective, or, at the election of the employer, beginning with the year preceding the year the plan is first effective. The annual credit limit is the lesser of $500 or 50% of the qualified startup costs. |
| **Long-Term Part-Time Employees** | 112 | Generally, plan years beginning after 12/31/20 | An employee who has at least 500 hours of service in three consecutive 12-month periods, and is at least age 21 by the end of the last such period, must be allowed to participate and make elective deferrals in a 401(k) plan. Participants eligible for the plan based on this provision may be excluded for nondiscrimination and coverage testing purposes and from application of the top-heavy rules. | Employers generally can exclude part-time employees (those who work less than 1,000 hours per year) from a defined contribution plan. In addition, a plan can generally delay participation in the plan based on attainment of age or completion of years of service. A plan can also provide that an employee is not entitled to an allocation of employer nonelective or matching contributions for a plan year unless the employee completes either 1,000 hours of service during the plan year, or is employed on the last day of the year even if the employee previously completed 1,000 hours of service in a prior year. Once an employee has completed 1,000 hours of service during a plan year, that employee cannot be precluded from making elective deferrals based on a service requirement. |
| **Nonelective 401(k) Safe Harbor Plans** | 103 | Plan years beginning after 12/31/19 | The safe harbor notice requirement is eliminated for nonelective safe harbor 401(k) plans. Additionally, a nonelective 401(k) safe harbor feature may be adopted as late as 30 days before the end of the plan year. | The ADP nondiscrimination test is deemed to be satisfied if a 401(k) plan includes certain minimum matching or nonelective contributions under either of two plan designs [a 401(k) safe harbor plan], as well as certain required rights and features, and satisfies a notice requirement. Each employee eligible to participate must be given, within a reasonable period before any year, written notice of the employee's rights and obligations under the arrangement and the notice must meet certain content and timing requirements (safe harbor notice). |
| **Open Multiple Employer Plans (MEPs)** | 101 | Plan years beginning after 12/31/20 | Unrelated employers may band together to create pooled employer plans (open MEPs), making it easier for small employers to create these plans. Such plans potentially reduce investment management fees, lessen administrative duties, and limit fiduciary liability. Also, the inadvertent failure by one employer to meet plan requirements will generally not result in plan disqualification. | A MEP is a single plan maintained by two or more unrelated employers. MEPs are commonly maintained by employers in the same industry and are used also by professional employer organizations (PEOs) to provide qualified retirement plan benefits to employees working for PEO clients. The qualified status of the plan as a whole is determined with respect to all employers maintaining the plan, and the failure by one employer (or by the plan itself) to satisfy an applicable qualification requirement may result in disqualification of the plan for all employers. |

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| **Access to Retirement Plans (Continued)** | | | | |
| **Retroactive Adoption of Qualified Plans** | 201 | Plan years beginning after 12/31/19 | An employer may adopt a plan retroactively to the last day of a plan year if it adopts the plan by the due date (including extensions) of the tax return for the tax year. | For a qualified retirement plan to be treated as maintained for a tax year, the plan must be adopted by the last day of the tax year. Contributions made by the due date (plus extensions) of the tax return for the employer maintaining the plan for a tax year are treated as contributed on account of that tax year. |
| **Individual Retirement Accounts (IRAs)** | | | | |
| **Compensation Definition** | 106 and 116 | *Nontuition:* tax years beginning after 12/31/19<br>*Difficulty-of-care:* contributions made after 12/20/19 | Certain taxable nontuition fellowship and stipend payments are treated as compensation for IRA purposes.<br>Difficulty-of-care payments excluded from income under IRC Sec. 131 are treated as compensation for determining nondeductible IRA contributions. | The deduction for IRA contributions for any tax year generally cannot exceed the compensation [defined in IRC Sec. 219(f)(1)] includible in the individual's gross income for the tax year. Taxable amounts received by graduate or postdoctoral students, such as stipends and non-tuition fellowship payments, are not treated as compensation for this purpose.<br>Gross income does not include amounts received by a foster care provider as qualified foster care payments (IRC Sec. 131). One type of such payments is a difficulty-of-care payment. Amounts contributed to an IRA must be included in gross income. |
| **Maximum Age for Traditional IRA Contributions** | 107 | Tax years beginning after 12/31/19 | The maximum age limit for traditional IRA contributions is repealed. | No contribution is allowed to a traditional IRA of an individual who has attained age 70½ before the close of the tax year for which the contribution is made. |
| **Nonspouse Stretch IRAs Limitation** | 401 | Distributions with respect to participants or IRA owners who die after 12/31/19 | The stretch period applicable to nonspouse inherited IRAs is changed, generally from a lifetime to a 10-year maximum distribution period. The change also applies to qualified plans. Exceptions include distributions to disabled or chronically ill beneficiaries, a beneficiary who is a surviving spouse, and a beneficiary who is no more than 10 years younger than the deceased employee or IRA owner. | Minimum distribution rules apply to qualified plans and IRAs. While an employee or IRA owner is alive, distributions of his interest must be made over his life or life expectancy, or over his and a designated beneficiary's (DB's) joint lives or joint life expectancy. The after-death minimum distribution rules vary depending on whether death occurs before, on, or after the required beginning date (RBD), and whether there is a DB.<br>For deaths on or after the RBD, the remaining interest generally must be distributed at least as rapidly as under the method of distribution being used before death.<br>For pre-RBD deaths, distributions generally must begin within one year of death and may be paid over the life or life expectancy of the DB (*stretch period*), with special rules for surviving spouse DBs. |
| **Required Minimum Distributions (RMDs)** | 114 | Distributions required to be made after 12/31/19 | The RBD for RMDs is changed from age 70½ to age 72, for individuals who attain age 70½ after 12/31/19. The change applies to IRA and qualified plan distributions. | Participants in qualified plans and IRA owners are generally required to begin taking RMDs from their plan by April 1 of the year following the year they reach age 70½—the RBD. |
| **Withdrawals for Birth and Adoption Expenses** | 113 | Distributions made after 12/31/19 | Distributions for the birth or adoption of a child (up to $5,000) are penalty-free withdrawals (not subject to the 10% penalty tax on early withdrawals). The participant may also repay the funds to the qualified plan or IRA. The change applies to IRA and qualified plan distributions. | A distribution from a qualified retirement plan or IRA is generally included in income for the tax year of distribution. Unless an exception applies under IRC Sec. 72(t), a distribution before the age of 59½ is subject to a 10% additional tax (an early withdrawal penalty) on the amount includible in income. Exceptions to the early withdrawal penalty rules include distributions made in cases of financial hardship or unforeseeable emergencies. |

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| **Lifetime Income Options** | | | | |
| **Annuity Selection** | 204 | 12/20/19 | In addition to the existing safe harbor, a safe harbor is added to eliminate uncertainty about the fiduciary standard for defined contribution plans. The new safe harbor will lower the fiduciary risk associated with providing a guaranteed retirement income contract. | A plan fiduciary must discharge its duties with respect to the plan solely in the interest of the participants and beneficiaries, with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with relevant matters would use (the *prudent man* requirement), by diversifying plan investments so as to minimize the risk of large losses. A safe harbor is provided for satisfying the prudent man requirement in selecting an annuity provider and a contract for benefit distributions from a defined contribution plan. |
| **Disclosure** | 203 | One year after the DOL issues a final rule | Plan sponsors must provide defined contribution plan participants with a lifetime income disclosure converting their account balance into an income stream at retirement at least once during any 12-month period. | The administrator of a defined contribution plan must provide benefit statements to participants—quarterly, annually, or upon written request. In 2013, the Department of Labor (DOL) issued an advance notice of proposed rulemaking providing rules under which a benefit statement provided to a defined contribution plan participant would have to include an estimated lifetime income stream of payments based on the participant's account balance, but the law did not require such information to be provided. |
| **Portability** | 109 | Plan years beginning after 12/31/19 | The qualified plan distribution rules are expanded to allow plans to make a direct rollover to an IRA or other retirement plan of a lifetime income (annuity) investment starting 90 days prior to the date after which such investment will no longer be available under the plan. | An employer-sponsored retirement plan that allows employees to direct the investment of their accounts may be amended to limit the investments that can be held in the plan. As a result, the employees may be required to change the investment funds held within their accounts. There is no mechanism for allowing the participant to keep the fund through a rollover or distribution of the investment. |
| **Miscellaneous Provisions** | | | | |
| **529 Plans** | 302 | Distributions made after 12/31/18 | 529 plans are expanded to cover registered apprenticeships and distributions to repay certain student loans of the beneficiary or siblings. | Distributions from a 529 plan (also called a *qualified tuition program*) are excludable up to the amount of the designated beneficiary's qualified higher education expenses, which do not include the expenses of registered apprenticeships or student loan repayments. |
| **Amendment Deadline** | 601 | N/A | Plans must comply with the SECURE Act's provisions in operation starting with their effective dates, but the plan documents can be updated to incorporate the required plan provisions by the last day of the first plan year beginning on or after 1/1/22. | N/A |
| **Closed Defined Benefit Plans** | 205 | 12/20/19, with elective retroactive application to plan years beginning after 12/31/13 | The nondiscrimination rules are modified to protect older, longer service participants in closed defined benefit plans (plans closed to new entrants). The new rules permit existing participants to continue to accrue benefits. | A defined benefit plan may be amended to limit participation to individuals who are employees as of a certain date. In this case, it is common for the employer also to maintain a defined contribution plan and to provide employer matching or nonelective contributions only to employees not covered by the defined benefit plan or at a higher rate to such employees. Over time, the employees continuing to accrue benefits under the defined benefit plan may be more highly compensated employees. |

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| **Miscellaneous Provisions (Continued)** | | | | |
| **Consolidated Form 5500** | 202 | Plan years beginning after 12/31/21 | The IRS and DOL are directed to develop a consolidated Form 5500, which will allow a group of similar plans to file a consolidated Form 5500. The form will be issued no later than 1/1/22. | Each plan must file a separate Form 5500. |
| **Kiddie Tax** | 501 | Tax years beginning after 12/31/19, with elective retroactive application to 2018 and 2019 tax years | IRC Sec. 1(j)(4) is repealed for tax years beginning after 12/31/19. This basically restores linking the child's tax rate to the parent's marginal tax rate, rather than to the trust and estate tax rate. However, a taxpayer may elect for this provision to apply to the 2018 and 2019 tax years. Amended returns may be beneficial for 2018. | Children who have unearned (typically, investment) income greater than $2,200 (in 2019) may be subject to tax based on estate and trust income tax rates (the so-called *kiddie tax*).<br>The Tax Cuts and Jobs Act of 2017 (TCJA) changed the way the kiddie tax is computed. Beginning in 2018, the kiddie tax computation no longer includes the parent's marginal tax rate; instead, the income tax rates for trusts and estates are used. Thus, there is no longer a connection between the kiddie tax and the parent's return, unless the parent elects to report the child's income on his return. |
| **Plan Loans** | 108 | Loans made after 12/20/19 | Qualified plans are prohibited from making plan loans through credit cards or similar arrangements. | Employer-sponsored retirement plans may provide loans to participants. There is no statutory limit on the number of plan loans that can be made, so there is no barrier to using credit card loans that otherwise meet the plan loan requirements. |
| **Penalties** | | | | |
| **Failure to File Form 8955-SSA** | 403 | Forms 8955-SSA due after 12/31/19 | The penalty for failing to file Form 8955-SSA is increased from $1 to $10 per day per participant required to be reported on the form, with the maximum annual penalty increased from $5,000 to $50,000. | The plan administrator of a plan subject to the vesting requirements under ERISA is required to file a registration statement (Form 8955-SA) with the IRS with respect to certain plan participants. A failure to file Form 8955-SA generally results in a civil penalty of $1 for each participant with respect to whom the failure applies, multiplied by the number of days during which the failure continues, subject to a maximum penalty of $5,000 for a failure with respect to any plan year. |
| **Failure to File Tax Return** | 402 | Tax returns with a due date after 12/31/19 | The penalty for failure to file a tax return within 60 days of the due date is increased to the lesser of $435 (from $330) or 100% of the tax due. | Unless a reasonable cause exception applies, the filing of a tax return more than 60 days late (determined with regard to extensions) incurs a minimum penalty of the lesser of $330 (for returns required to be filed after 2019) or 100% of the tax due. There is no penalty if the return shows no tax due. |
| **Failure to Provide Required Tax Withholding Notice** | 403 | Withholding notices required to be provided after 12/31/19 | The penalty for failure to provide a required tax withholding notice to a plan participant receiving a distribution from a plan is increased to $100 per failure, with the maximum penalty increased to $50,000. | Withholding requirements apply to distributions from qualified plans and IRAs, but payees may generally elect not to have withholding apply. A plan administrator or IRA custodian is required to provide payees with notices of the right to elect no withholding. Failure to provide a required notice generally results in a civil penalty of $10 for each failure, subject to a maximum penalty of $5,000 for all failures during a calendar year. |
| **Form 5500 Late Filing** | 403 | Forms 5500 with a due date after 12/31/19 | The penalty for late filing of Form 5500 is increased to $250 per day (with a maximum penalty of $150,000). | A failure to file Form 5500 generally results in a civil penalty of $25 for each day during which the failure continues, subject to a maximum penalty of $15,000. |