

Client Action Bulletin

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SECURE Act and Federal Spending Law Affects Employer-Sponsored Retirement and Health Benefit Plans

SUMMARY

The President on Dec. 20, 2019, signed the “Further Consolidated Appropriations Act, 2020” into law (P.L. 116-94), funding government agencies for the remainder of the 2020 federal fiscal year (ending Sept. 30, 2020). The law includes significant provisions – some mandatory, some optional – affecting employer-sponsored retirement and health benefit plans.

DISCUSSION

[Retirement Plan Provisions](#)

The new law includes provisions from the “Setting Every Community Up for Retirement Enhancement (SECURE) Act,” an aggregate of proposed retirement law changes introduced since 2018. The law has the largest effects for defined contribution (DC) plans (but see a notable exception in the following list), such as:

- a mandatory increase – to age 72 from age 70-1/2 – for the required beginning date for mandatory distributions (effective for distributions required to be made after Dec. 31, 2019, for employees (and IRA owners) who attain age 70-1/2 after Dec. 31, 2019) [Note: This provision also applies to defined benefit pension plans];
- an increase, to 15% from 10%, on the escalation cap for safe harbor plans applying the qualified automatic contribution arrangement (QACA) feature, for years after the first plan year in which the employee is automatically enrolled (effective for plan years beginning after Dec. 31, 2019);
- a requirement that DC plan (and IRA) distributions generally be made to nonspouse beneficiaries within 10 years of the death of the account holder (effective for required minimum distributions to beneficiaries who die after Dec. 31, 2019);
- simplification of the 401(k) safe harbor rules, including the ability to add nonelective safe harbor contributions mid-year (effective for plan years beginning after Dec. 31, 2019);
- a requirement that 401(k) plans allow long-term employees working more than 500 but less than 1,000 hours per year (for at least three consecutive years) to participate (generally effective for plan years beginning after Dec. 31, 2020);
- permission for plans to adopt “qualified birth or adoption distributions” that would be exempt from the early distribution tax penalties, mandatory tax withholding, notifications, and direct rollover rules; and
- permission for DC plans, including 403(b) or governmental 457(b) plans, to make direct trustee-to-trustee transfers of lifetime income investments to another employer-sponsored retirement plan or IRA (or, for annuity contracts, direct distribution to the individual) (effective upon the Dec. 20, 2019 date of the law’s enactment).

The new law also includes provisions that apply to specific types of plans, such as “open” multiple employer plans (MEPs) for unrelated employers; cooperative and small-employer charity (CSEC) pensions; church-controlled organizations’ plans or retirement income accounts; community-newspaper plans; small-employer plans; “closed” defined benefit plans; and plan sponsors and participants affected by certain natural, “declared” disasters. In addition, the law provides targeted relief for coal miners’ pension and health benefits.

For defined benefit pension plans and money purchase plans, as well as governmental 457(b) plans, the new law lowers the age – from 62 to 59-1/2 – at which individuals may receive in-service distributions.

[Administrative Changes: Retirement Plan Amendments, Filings, Penalties, Disclosures](#)

The law contains several provisions relating to benefit plan administration. Key among them are:

- *Remedial amendment period* – Plan amendments due to the SECURE Act provisions or related regulations may be made through the last day of the plan year that begins in 2022, except that governmental and collectively bargained plans have through the last day of the plan year that begins in 2024.
- *Plan adoption deadline* – Employers have until the due date (with extensions) for their tax returns to adopt a plan for a taxable year.
- *Consolidated Form 5500 reporting of DC plans* – A plan sponsor may file a single consolidated Form 5500 for a group of similar plans. The group of plans must: consist of individual account or DC plans; have the same trustee, named fiduciaries, and administrator; use the same plan year; and offer the same investments or investment options.
- *Lifetime income disclosures by DC plans* – Benefit statements must, at least annually, include an illustration of the monthly payments a participant would receive under a qualified joint-and-survivor annuity and a single-life annuity. The Department of Labor is required to issue regulations and a model disclosure within one year of the SECURE Act's enactment date of Dec. 20, 2019
- *Fiduciary safe harbor for annuity provider selection* – The law creates a statutory safe harbor similar to the regulatory safe harbor for fiduciaries in the selection of annuity providers. Under the SECURE Act's provisions, DC plan fiduciaries: could rely on the insurer's written representations about its financial capabilities; may consider value, features, and insurer attributes other than the lowest-cost contract; and need not review the appropriateness of a selection after purchasing a contract for a participant.
- *Increased penalties* – For failures to file certain forms and notices due after Dec. 31, 2019, penalties will increase tenfold. For example, the penalty for failing to file Form 5500 (*Annual Return/Report of Employee Benefit Plan*) increases from \$25/day to \$250/day (up to a maximum of \$150,000, from \$15,000). Failing to file Form 8955-SSA (*Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits*) or failing to file a required notice of certain changes in a plan's registration information increases to \$10/participant or \$10/day, respectively (up to a maximum of \$50,000 or \$10,000, respectively). A failure to provide a required withholding notice to participants prior to making a distribution increases to \$100/failure (up to a maximum of \$50,000).

Employer Health Plan Provisions

The law new law permanently repeals: the "Cadillac" tax, the 40% excise tax (which had been delayed by 2016 and 2018 laws and set to become effective in 2022) on "high-cost" employer-sponsored health plans (effective for taxable years after Dec. 31, 2019); and the annual fee on individual and group health insurance providers (effective for calendar years beginning after Dec. 31, 2020).

The Patient-Centered Outcomes Research Institute (PCORI) fee that was set to expire with plan/policy years ending on or before Oct. 1, 2019, and assessed on health insurers and self-insured plans will now extend to plan/policy years ending before Oct. 1, 2029.

Tax Extenders

The law includes one-year (through 2020) tax "extenders" covering tax provisions that have expired or are set to expire. Some of these would apply to specific employment settings, such as the tax credit for employers that provide certain paid family leave, the Work Opportunity Tax Credit for hiring individuals from targeted groups, and the Indian Employment tax credit for businesses that employ American Indians or their spouses. In addition, the law extends through 2020 the credit for health insurance coverage for certain individuals receiving Trade Adjustment Assistance or pension benefits paid by the Pension Benefit Guaranty Corporation.

ACTION

The SECURE Act presents retirement plan sponsors – mostly those offering DC plans – with numerous mandatory and optional provisions to consider and, when/if adopted, will require plan amendments and changes to participant communications and administrative systems. Employers with insured or self-insured group health plans are likely to welcome the repeal of the insurance provider fee and the Cadillac tax, and should also be mindful of the PCORI fees being extended for an additional 10 years.

For additional information about the SECURE Act, an assessment of the new law's provisions on your retirement plan, or assistance with plan adoption or amendments and participant communications, please contact your Milliman consultant.

Other Recent Milliman Publications You May Be Interested in:

- ***Pension Funding Index, December 2019***
- ***2019 Public Pension Funding Study***
- ***PERiScope, December 2019*** This article, “[Mortality projection: Making reasonable assumptions about future lifetimes](#),” presents two alternative options for public plan mortality projection based on historical mortality improvement data. These alternatives are intended to reduce volatility from changes in the mortality improvement assumption, and therefore lead to more stable long-term pension cost and liability calculations, while providing a reasonable estimate of the long-term pension liability in accordance with the Actuarial Standards of Practice.
- ***Top 10 articles and reports Milliman published in 2019***
- ***Multiemployer health and welfare fund statistics: Fall 2019*** The Milliman Multiemployer Health and Welfare Study analyzes various financial disclosures for multiemployer health and welfare plans, also known as Taft-Hartley plans, nationwide.
- ***Five benefit trends from 2019 that we’ll continue to see in 2020*** Offering the right benefits has become even more important for employers trying to attract and retain top talent



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