



**MRP Plans, Inc.**  

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**Retirement Plan Services**

## **Review of the SECURE Act**

In mid-December, Congress passed, and the President is expected to sign, HR 1865, which includes the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019. There are some substantive changes, probably the most since the Pension Protection Act of 2006...as usual it's a mixed bag. Below is a review of the provisions most relevant to my clients, with my (sometimes jaded and cynical) remarks.

For the descriptions, I have borrowed heavily from a review by the American Retirement Association (parent organization to the American Society of Pension Professionals and Actuaries, ASPPA) of which I am a member.

### **Multiple Employer Plans / Pooled Employer Plans**

Effective for Plan years beginning after Dec. 31, 2020

Makes it easier for two or more unrelated employers to join a pooled employer plan by reducing potential liability and setting standards.

*Remarks: This has been in the works for some time and is touted as a way to reduce plan costs through consolidation (industry shorthand is Open MEPs (Multiple Employer Plans)). I'm skeptical – it seems to be driven by those who want to consolidate assets and become the Amazons of retirement plans. I don't see huge cost savings for my typical (small) clients, but there could be some real savings potential in the larger plan market (over 100 participants) where an accountant's audit is required, generally costing tens of thousands of dollars, and those costs could potentially be spread over many plans. Worth keeping an eye on this.*

## **Relaxed rules relating to election of safe harbor**

### **401(k) status**

Effective for Plan years beginning after Dec. 31, 2019

The safe harbor notice requirement for nonelective contributions is eliminated, and the bill also permits plan sponsors to switch to a safe harbor 401(k) plan with nonelective contributions at any time before the 30th day before the close of the plan year. Plus, amendments after the end of the year would be allowed if the nonelective contribution is at least 4% of compensation (rather than at least 3%).

Remarks: *This is good news for sponsors and advisors who don't plan well, and it simplifies things for those of us who do plan well by eliminating the notice requirement.*

## **Increased credits for small employer pension plan startup costs**

*Effective for Tax years beginning after Dec. 31, 2019*

Increases the credit by changing the calculation of the flat dollar amount limit on the credit to the greater of: (1) \$500, or (2) the lesser of: (a) \$250 for each employee of the eligible employer who is not a highly compensated employee and who is eligible to participate in the eligible employer plan maintained by the eligible employer, or (b) \$5,000. The credit applies for up to three years.

Remarks: *This is good news for small plan sponsors who set up a new plan!*

## **Repeal of maximum age for traditional IRA contributions**

Effective for Contributions and distributions made for tax years after Dec. 31, 2019

Repeals the prohibition on contributions to a traditional IRA by an individual who has attained age 70½.

Remarks: *OK, not the biggest thing to ever happen but it's nice.*

## **Qualified plans prohibited from making loans through credit cards and similar arrangements**

Applies to loans made after date of enactment

Prohibits the distribution of plan loans through credit cards or similar arrangements.

Remarks: *Good! This was a silly idea floated a few years ago and it needed a stake in its heart.*

## **Portability of lifetime income options**

Effective for Tax years beginning after Dec. 31, 2019

Permits 401(k) and similar plans to make a direct trustee-to-trustee transfer to another employer-sponsored retirement plan or IRA of lifetime income investments or distributions of a lifetime income investment in the form of a qualified plan distribution annuity, if a lifetime income investment is no longer authorized to be held as an investment option under the plan.

Remarks: *Some in Congress (prodded by insurance companies that sell these products) are under the delusion that our national retirement income problems can be solved by having more annuity (monthly income) options in plans (the real problem is simple – not enough money). Not a big deal/nobody in my world cares.*

## **401(k) plans must allow long-term, part-time employees to participate**

Applies to plan years beginning after Dec. 31, 2020

Under current law, employers generally may exclude employees who work less than 1,000 hours per year from their plans. Except in the case of union plans, employers will have to admit into their plans employees with three consecutive years of service with more than 500 hours – but they don't have to get employer contributions.

Remarks: *Of course there are a handful of part timers who would like to save through a 401(k) plan but can't, due to the 1000 hour requirement. But I don't believe there are that many, and they are not precluded from saving through another vehicle! This is driven by the idea that "studies have shown savings rates are higher for employees who have a 401(k)." Coming from the retirement plan industry, it is of course self-serving, and while true on its face, does not necessarily translate to higher savings rates in this situation. It'll be a nuisance at best to us and our clients; for some plans with close to 100*

*participants, it will tip them over that magic number and require an audit (at a steep cost, as noted above). Classic well-intentioned but potentially counterproductive stuff from your government at work (I'm compelled to note that I am NOT an arch-conservative, but this is...stupid.)*

## **Penalty-free withdrawals for individuals in case of birth or adoption**

Distributions made after Dec. 31, 2019

This provision creates a new waiver from the IRC Section 72(t) additional income tax on retirement plan distributions used for childbirth or adoption expenses up to \$5,000.

*Remarks: Sigh. Far be it for me to be against childbirth or adoption but what part of "retirement plan" is not understood here?*

## **Increase in age for required minimum distributions**

Effective for distributions made after Dec. 31, 2019, for individuals who attain age 70½ after such date

The provision increases the required minimum distribution age from 70½ to 72.

*Remarks: /rant/ We have trillion dollar deficits. Retirement plans are one of the biggest tax shelters still remaining, but they generally defer taxation, and don't eliminate it. Pardon me for betraying my wealthy clients, but think about it – the people who don't **want** their distributions at age 70 ½ (or ever) don't **need** them! So this is strictly a rich person's sop couched in everyman language. Remember folks, you don't have to spend the money after it is taken out of your plan or IRA, you just have to be taxed on it. It's not all that significant but it's stupid. /rant off/*

## **Plan adopted by filing due date for year may be treated as in effect as of close of year**

Applies to plans adopted for tax years beginning after Dec. 31, 2019

Allows businesses to adopt qualified retirement plans after the end of the plan year, up to the due date (including extensions) of the tax return.

*Remarks: This is nice, I guess, for the worst procrastinators. "The last minute" just got moved to the due date of the tax return (when we are scrambling to do*

*work for the not-worst procrastinators).*

## **Disclosure regarding lifetime income**

Effective...see below

Requires benefit statements provided to DC plan participants to include a lifetime income disclosure at least once during any 12-month period.

*Remarks: Again with the lifetime income! Given that it applies to pension benefit statements furnished more than 12 months **after DOL issues interim final rules**, and we are still waiting for the DOL to issue some rules applying to the Pension Protection Act of 2006 (yes, 13 years later, and the law said they were "required" to issue them within 6 months), we'll worry about it later. But it will surely be "wah wah" (think Charlie Brown's teacher) on the benefit statements that no one will pay attention to.*

## **Fiduciary safe harbor for selection of lifetime income provider**

No effective date

Provides protection for plan sponsors in the selection of lifetime income providers, a fiduciary act under ERISA.

*Remarks: Again with the lifetime income! Again, misguided thinking that this is a solution when the problem is not enough money.*

## **Modification of required distribution rules for designated beneficiaries**

Applies to distributions with respect to employees who die after Dec. 31, 2019

Shortens the distribution timeframe for non-spousal beneficiaries (and certain others) to the end of the 10th calendar year following the year of the employee or IRA owner's death (from the beneficiary's life expectancy).

*Remarks: From a policy standpoint, this is hard to argue with – we are talking about **retirement** plans after all. And remember that beneficiaries don't have to spend the money, they just have to be taxed on it. But...it will not only accelerate income (and tax on that income) but might potentially bunch that income in a way that will push beneficiaries into higher brackets. Seems a bit unfair to change the rules.*

## **Increased penalties for failure to file retirement plan returns**

Applies to returns, statements and notifications required to be filed, and notices required to be provided after Dec. 31, 2019

Increases the failure to file penalties for 5500s to \$250 per day, not to exceed \$150,000. Failure to file a registration statement would incur a penalty of \$10 per participant per day, not to exceed \$50,000. Failure to file a required notification of change would result in a penalty of \$10 per day, not to exceed \$10,000 for any failure. Failure to provide a required withholding notice results in a penalty of \$100 for each failure, not to exceed \$50,000 for all failures during any calendar year.

Remarks: *Wow. This is good news for us as service providers; we suddenly became more important. It's not clear if the reduced penalties under voluntary programs for late filers will change accordingly. Frankly this is a bit steep for a return that doesn't involve tax payments but I guess they need some kind of stick.*

## **Special disaster-related rules for use of retirement funds**

Applies to individuals who suffered losses in a qualified disaster area beginning after 2017 and ending 60 days after the date of enactment.

This provision waives the 10% early withdrawal penalty for qualified disaster distributions from retirement plans up to \$100,000. Individuals can spread income tax payment on the qualified disaster distribution ratably over a three-year period. Individuals are permitted three years to repay the distribution back into the retirement plan. Individuals who took a hardship distribution from a retirement plan for a first-time home purchase in the disaster area whose transaction was terminated due to the disaster is able to recontribute the amount back into the retirement plan without tax penalty. The loan limits on retirement plans subject to this relief can be increased from \$50,000 to \$100,000 and retirement plan loan repayment periods extended.

Remarks: *One would seem to be heartless to argue against this, but it does raise questions: What about someone who had a "disaster" but wasn't in an official disaster area? What about those who are in a disaster area but don't really need this relief (but take advantage of it anyway)?*

## **Small employer automatic enrollment credit**

Effective for Tax years beginning after Dec. 31, 2019

Creates a new tax credit of up to \$500 per year to employers to defray startup costs for new 401(k) plans and SIMPLE IRA plans that include automatic enrollment. The credit is in addition to the plan start-up credit allowed under present law and would be available for three years. The credit would also be available to employers that convert an existing plan to an automatic enrollment design.

Remarks: *We're not crazy about automatic enrollment features – it's just something to screw up, and we generally come up with better plan designs. Meh.*

## **Reduction in minimum age for allowable in-service distributions**

Effective Plan years beginning after Dec. 31, 2019

Moves the voluntary in-service distribution age under IRC Section 401(a)(36) for defined benefit plans and 457(b) plans from age 62 to age 59 1/2.

(Technically not part of the SECURE Act)

Remarks: *I'm not sure why this is important but it has little or no effect on operations in our clients' plans.*

## **Increase in 10% cap for automatic enrollment safe harbor after 1st plan year**

Effective for Plan years beginning after Dec. 31, 2019

Modifies the automatic enrollment safe harbor to raise the automatic escalation cap from 10% of pay to 15% of pay.

Remarks: *Not relevant to my clients; this is more of a large plan issue.*

Ed Snyder

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