A look inside the SECURE Act, Division O of the appropriations bill

These are the key provisions included in the Act, including their respective effective dates, and John Hancock's viewpoint of each one.

Enhanced tax credits for small-employer plans

Sections 104 and 105

For taxable years beginning after December 31, 2019

Summary:

This provision is intended to expand retirement plan coverage for employees of small employers (i.e., employers with less than 100 employees in the preceding tax year). The existing tax credit of $500 for plan startup costs will increase to as much as $5,000 per year for three years, depending on the number of non-highly compensated employees eligible to participate in the new plan.

Moreover, small employers that add an eligible automatic-enrollment arrangement to their new or existing plan may be eligible for an additional $500 tax credit per year for three years.

John Hancock viewpoint:

The tax credits should promote greater plan adoption by small employers. In addition, automatic enrollment has proven to be an effective measure to get more people "retirement ready" in the future.

Additional time to adopt the plan

Section 201

For taxable years beginning after December 31, 2019

Summary:

Employers that want to retroactively adopt a new stock bonus (including employee stock ownership plans), pension, profit-sharing, or annuity plan will have additional time. The deadline to adopt one of those plans will be the due date of the employer's federal income-tax return (including extensions) for the tax year in which the plan becomes effective. Employers meeting that deadline can treat the plan as having been adopted as of the last day of that tax year. **Note:** 401(k) contributions can only be made on a prospective basis (i.e., after the adoption of the plan).

John Hancock viewpoint:

The additional time to establish a plan provides flexibility for employers that are considering adopting a plan and provides employees the opportunity to receive contributions for that earlier year and begin to accumulate retirement savings.

Expanded coverage for long-term, part-time employees in 401(k) plans

Section 112

For plan years beginning after December 31, 2020

Summary:

Under current law, employers generally may exclude part-time employees (to the extent such employees never work 1,000 hours in a year) when providing a 401(k) plan to their employees. Under this new requirement, employees of all 401(k) plans (except plans that are collectively bargained) would qualify for participation by either working three consecutive years of at least 500 hours each and attaining age 21 by the end of such consecutive period or after one year of service totaling at least 1,000 hours. This provision may require 401(k) plans to have a dual eligibility requirement.

Employers won't need to make nonelective contributions for these workers or match their 401(k) contributions. Employers can also exclude these employees from nondiscrimination testing and won't have to provide them with top-heavy minimum benefits.

Note: Although this provision is effective for plan years beginning after December 31, 2020, service during 12-month periods beginning prior to 2021 is disregarded.

John Hancock viewpoint:

This provision should provide greater participation opportunities for part-time employees. Currently, many such employees are stymied by the 1,000-hours-of-service requirement.

MEPs/PEPs

Section 101

For plan years beginning after December 31, 2020

Summary:

This provision is intended to expand DC plan coverage for employees of small employers, although it extends to employers of all sizes. It also goes further than the related provision in the Department of Labor's (DOL's) final rule on association retirement plans (ARPs) released last year by creating the ability for employers with no business or industry relationship to band together to offer MEPs—referred to as open MEPs. Participating employers would be required to use a pooled plan provider to perform all the administrative duties necessary to ensure regulatory compliance. The provision also provides relief from the one bad apple rule, under which one employer's noncompliance can threaten the tax-qualified status of an entire plan.

John Hancock viewpoint:

The allowance of open MEPs should help make DC plans more affordable and less administratively burdensome for smaller businesses; however, not everyone feels that open MEPs will be as beneficial as touted by their proponents. Critics point out that employers may feel restricted as it relates to plan design, investment choice, and participant communication. In addition, with the advent of low-cost, quality investment funds and technological enhancements, as well as the new tax credits afforded by the SECURE Act, single-employer plans should be very competitive with open MEPs.

Increased age for RMDs

Section 114

For distributions required to be made after December 31, 2019, with respect to individuals who reach age 70½ after such date

Summary:

The required beginning date for RMDs will increase from age 70½ to 72, but only for individuals who reach age 70½ after December 31, 2019. Individuals who reach age 70½ in 2019 must receive an RMD by April 1, 2020, and then subsequent RMDs by every December 31 thereafter.

John Hancock viewpoint:

The 70½ age is based on life expectancies in the early 1960s and hasn't been updated since. People are living longer and so need their retirement savings to last longer. This provision should provide retirees with increased flexibility. RMDs usually have a tax effect on retirees (especially those with large retirement account balances), because these distributions are taxed as ordinary income. If retirees are bumped into higher tax brackets, they're also at risk of facing higher taxes on Social Security benefits and Medicare.

Removal of inherited stretch provisions

Section 401

For taxable years beginning after December 31, 2019

Summary:

If a DC plan participant or IRA owner passes away and leaves their account to a beneficiary who's an individual other than their spouse, the beneficiary will have 10 years after the decedent's year of death to receive full distribution of the account, unless the beneficiary qualifies as an "eligible designated beneficiary" under the SECURE Act (in which case RMDs may be stretched under the old rules). Eligible designated beneficiaries include minor children up until the age of majority, individuals not more than 10 years younger than the decedent, the chronically ill, and the disabled. Prior to the enactment of the SECURE Act, a nonspouse designated beneficiary could stretch out RMDs over their own life expectancy.

John Hancock viewpoint:

The removal of the inherited stretch provisions is considered the single largest tax revenue generator in the SECURE Act, as many beneficiaries will see higher taxes and a shorter distribution period for inherited accounts. Plan participants and IRA owners may want to review their beneficiary designations, especially if their goal is to provide lifetime income to a child.

Removal of age restriction for traditional IRA contributions

Section 107

For taxable years beginning after December 31, 2019

Summary:

The SECURE Act repeals the age restriction on contributions to traditional IRAs. Under previous rules, individuals who reached age 70½ couldn't contribute to a traditional IRA for the year during which they turned age 70½ or any later year. There's never been an age restriction on Roth IRA contributions. **Note:** This new provision reduces the amount a taxpayer may deduct for qualified charitable distributions from an IRA if post-age 70½ deductible IRA contributions are made.

John Hancock viewpoint:

This provision will allow individuals who are age 70½ or older the ability to continue saving on a tax-deferred basis through a traditional IRA. Further, it provides retirees with increased flexibility as it relates to retirement income drawdowns.

Notice requirement change for nonelective safe harbor 401(k) plans

Section 103

For plan years beginning after December 31, 2019

Summary:

The required annual safe harbor notice, for a plan seeking to satisfy the safe harbor requirements by making nonelective contributions of at least 3%, is eliminated. **Note:** Employers that make safe harbor matching contributions will still need to provide the annual safe harbor notice.

John Hancock viewpoint:

This provision should reduce the administrative burden associated with the annual notice process.

Conversion rule for change to safe harbor 401(k) plans

Section 103

For plan years beginning after December 31, 2019

Summary:

Plan sponsors will now be able to convert a standard 401(k) plan to a safe harbor nonelective plan for a given plan year by completing the following required amendments:

- At least 31 days before the close of the plan year, or
- Generally, no later than the close of the following plan year—provided the employer makes a nonelective contribution of at least 4%.

John Hancock viewpoint:

This provision should provide employers with greater flexibility by extending the conversion deadlines.

Auto-escalation cap increase for safe harbor qualified automatic contribution arrangement plans (QACA)

Section 102

For plan years beginning after December 31, 2019

Summary:

The cap on the auto-escalation of deferrals in a QACA will increase from 10% of plan compensation to 15%, beginning with the plan year following the plan year the employee is automatically enrolled.

John Hancock viewpoint:

This provision should provide greater saving opportunities for participants who were auto-enrolled into the plan and subsequently auto increased on an annual basis.

Requirement to provide a lifetime income disclosure

Section 203

For statements furnished more than 12 months after DOL guidance is issued

Summary:

On an annual basis, DC plan benefit statements will now be required to include a lifetime income disclosure. This disclosure will project the amount of monthly income participants will receive if their total account balance is paid out as a single-life or a qualified joint and survivor annuity, using DOL-prescribed assumptions.

The SECURE Act requires the DOL to issue model disclosures, annuity assumptions, and regulations by December 20, 2020.

Plan fiduciaries who use the DOL's model disclosures and assumptions will have no ERISA liability for providing those annuity amounts. **Note:** This provision is effective for benefit statements furnished more than 12 months after the DOL has finished issuing the assumptions, model language, and interim final rules.

John Hancock viewpoint:

This provision should result in participants having a better understanding of their retirement savings and whether their expected cash flow in retirement will be enough to meet their expected expenses.

Increased portability of lifetime income investments

Section 109

For plan years beginning after December 31, 2019

Summary:

This provision allows DC plan participants to take a distribution of a lifetime income investment without regard to the restrictions on plan withdrawals. The distribution would be allowed only if (1) the lifetime income investment is eliminated as an investment option under the plan and (2) the distribution is either a direct rollover to an IRA or other eligible retirement plan, or a distribution of an annuity contract. DC plans can permit distributions starting 90 days before the date the lifetime income investment option is eliminated.

John Hancock viewpoint:

This provision addresses the portability issues that currently exist with lifetime income investments while also eliminating the possibility of hefty fees and surrender charges.

Fiduciary safe harbor for selection of annuity provider

Section 204

Date of the enactment

Summary:

DC plan fiduciaries selecting annuity providers can now rely on representations from insurers regarding their ability to fulfill the contract and their status under state insurance laws. The new safe harbor protections also clarify there's no requirement to select the lowest-cost contract and provide criteria for evaluating the total value delivered by insurers and their annuity offerings.

John Hancock viewpoint:

This provision should help eliminate roadblocks to offering lifetime income options under a DC plan by helping plan fiduciaries satisfy the duty of prudence under ERISA when selecting an annuity provider and a contract for benefit distributions from a DC plan. It also provides liability protection in the event of an insurer's inability to meet future financial obligations.

Increased penalty amounts for failure to file certain returns, statements, and notices

Section 403

For returns, statements, notifications, and notices required to be filed/provided after December 31, 2019

Summary:

The penalties for failing to file certain retirement plan returns, statements, and notices (e.g., Form 5500) to be filed or provided after December 31, 2019, will increase significantly:

- The penalty for a late Form 5500 will increase to $250 per day, up to a total of $150,000, rather than the current $25 per day, up to a maximum of $15,000.
- The failure to file a registration statement will incur a daily penalty of $10 per participant, up to a total of $50,000, rather than the current $1 per participant daily, up to a maximum of $5,000.
- The penalty for failing to file a required notification of change will increase from $1 to $10 per day, and the maximum will rise from $1,000 to $10,000.
- The failure to provide a required withholding notice would trigger a penalty of $100 for each failure, with a limit of $50,000 for all failures during any calendar year, rather than the current $10 for each failure, with a $5,000 limit for the calendar year.

John Hancock viewpoint:

The increased penalty amounts should encourage the filing of timely and accurate Form 5500s and other required statements and notices.

Combined annual report for group of plans

Section 202

For plan years beginning after December 31, 2021

Summary:

This provision directs the IRS and DOL to effectuate the filing of a consolidated Form 5500 for similar plans. Plans eligible for consolidated filings are DC plans that have the same trustee, the same fiduciary (or named fiduciaries) under ERISA, the same administrator, the same plan year, and provide the same investments or investment options to participants and beneficiaries.

The new filing rule will be implemented no later than January 1, 2022, and shall apply to returns/reports for plan years beginning after December 31, 2021.

John Hancock viewpoint:

The reporting change should help reduce administrative costs.

Penalty-free withdrawal for birth or adoption

Section 113

For distributions made after December 31, 2019

Summary:

This provision provides a new exemption from the 10% early withdrawal penalty for DC plan and IRA distributions taken prior to age 59½ to cover the cost of childbirth or adoption expenses up to $5,000. To qualify for the exemption, the distribution must be made during the one-year period beginning on the date on which a child of the individual is born or on which the legal adoption is finalized. Subject to certain restrictions, this provision also allows the repayment of such expenses to a plan or IRA. **Note:** This doesn't apply to the adoption of a stepchild.

John Hancock viewpoint:

This provision should negate one possible reason for not saving for retirement while providing financial assistance when facing childbirth or adoption expenses.

Prohibition on use of credit cards for plan loans

Section 108

Loans made after date of the enactment

Summary:

This provision prohibits plans from making participant loans through credit cards or similar arrangements.

John Hancock viewpoint:

This provision shouldn't have much effect on the industry, as there's very limited use of the credit card approach for plan loans.

Testing relief for DB plans

Section 205

Generally, date of enactment, or, if plan sponsor elects, for plan years beginning after December 31, 2013

Summary:

This provision provides relief for nondiscrimination testing, the minimum coverage rules, and the minimum participation rules for DB plans that are partially frozen. DB plans must meet certain requirements to be afforded this relief.

John Hancock viewpoint:

This is welcome relief for partially frozen DB plans that, over time, have a high concentration of highly compensated employees accruing benefits and have difficulty satisfying the abovementioned Internal Revenue Code (IRC) compliance requirements.

Reduced minimum age for in-service withdrawals from pension plans and governmental 457(b) plans

Division M, Section 104

For plan years beginning after December 31, 2019

Summary:

As part of the year-end appropriations bill (but not part of the SECURE Act), the minimum age for in-service withdrawals from pension plans (i.e., DB plans, which also include cash balance plans, and money purchase plans) and governmental 457(b) plans has been reduced to age 59½. Under prior rules, such in-service withdrawals weren’t permitted until age 62 or, in the case of a governmental 457(b) plan, age 70½.

John Hancock viewpoint:

This provision should provide more flexibility and administrative ease by conforming to rules to those under 401(k) and 403(b) plans.

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