PATTERSON SMITH ASSOCIATES, LLC

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The Secure Act – Key Provisions that Affect Retirement Plans

A bill that comprehensively reshapes the realm of employer-sponsored retirement plans for employers and employees alike has been passed into law. The bipartisan Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE) Act, originally introduced in April 2019 was added as Division O to the Further Consolidated Appropriations Act, 2020 (H.R. 1865) and was signed into law by President Trump on December 20, 2019.

The overwhelming narrative of the SECURE Act is the expansion of retirement plan coverage and the lowering of retirement savings hurdles for working Americans. With the passage of the SECURE Act, lawmakers seek to place the onus on employers to incentivize employees to invest in their own financial futures. The act is also intended to help employers overcome the challenges involved with offering and administering a workplace retirement plan.

The SECURE Act includes a total of 29 provisions, below are highlights some of the main legislative sections of the SECURE Act. The effective dates vary by tax, calendar and plan years.

Plan Years beginning after December 31, 2019

Rules in electing Safe Harbor Status (ONLY applies to Safe Harbor Non-Elective Option)

- Traditional 401(k) plans can now be amended mid-year to become a 3% non-elective contribution type safe harbor plan before 30 days are left in the given plan year.
- If the mid-year amendment is adopted fewer than 31 days before the end of the plan year, the non-elective safe harbor contribution must equal at least 4% of annual compensation (or from participant entry date depending on the plan document) and the actual amendment must be adopted no later than the end of the next plan year.
- The annual safe harbor notice would no longer be required for plans using the non-elective contribution approach.

Increase in cap for QACA (Qualified Automatic Contribution Arrangement) Plans

- The cap on automatic enrollment contributions for QACA plans has increased from 10% to 15% of compensation for qualified automatic contribution arrangement safe harbor plans unless it is the first year of the plan.
- In the first year the plan is adopted the automatic enrollment contribution cannot be more than10%.

Reduction in minimum age allowable for in-service distributions for Defined Benefit and Governmental plan

- Moves the voluntary in-service distribution age for defined benefit plans and Governmental 457(b) plans from age 62 to age 59 1/2.

Tax Years beginning after December 31, 2019

Adopt a profit-sharing plan by filing due date

- Permit a new plan to be treated as effective for the prior tax year if adopted no later than the due date of the prior year's tax return including extensions.
- The additional time to establish a plan provides flexibility for employers that are considering adopting a plan and the opportunity for employees to receive contributions for that earlier year and begin to accumulate retirement savings.

Penalty free withdrawals for the birth or adoption of a child

- The SECURE Act allows Americans who just had a baby or adopted a child to take a withdrawal of up to $5,000 from their vested retirement accounts, including a 401(k) or IRA, without incurring the 10% early withdrawal penalty. Taxes still apply.
- The new rule allows each parent to use the $5,000 exemption, which means a couple could take up to $10,000 out penalty-free if they each have separate retirement accounts.
- You have one year from the date your child is born or the adoption is finalized to withdraw the funds from your retirement account without paying the 10% penalty.

Increase in Required Minimum Distribution (RMD) Age

- Increase the age at which minimum distributions must begin to 72 (effective with respect to individuals who attain age 70½ after December 31, 2019).
- Individuals who have already started their 70 ½ distributions will continue taking their RMD.

Calendar Years after December 31, 2019

Increased penalties for failure to file Form 5500

- Increase the late filing penalties for Form 5500 to $250 per day, not to exceed $150,000, and for Form 8955-SSA to $10 per participant per day, not to exceed $50,000.

- Failure to file a required notification of change in a plan's registration information would result in a penalty of $10 per day, not to exceed $10,000 for any failure.

- Failure to provide a required withholding notice such as 1099-R results in a penalty of $100 for each failure, not to exceed $50,000 for all failures during any calendar year.

Plan Years beginning after December 31, 2020

Allowing long-term part-time employees to participate in retirement plans

- Effective January 1, 2021 any part time employee who has not otherwise satisfied the plan's eligibility conditions must be permitted to participate and make elective contributions *if* the employee has completed 3 consecutive 12-month periods of employment and was credited with at least 500 hours of service in each of those periods. (Except collective bargained plans not applicable).

- No employer contribution (including top-heavy minimum contributions) would be required until the employee has satisfied the plan's normal eligibility requirements. However, the part time employee would need to be allowed to defer into the plan.

- Twelve-month periods of service before January 1, 2021, however, need not be counted, which will further delay the date by which a part-timer might first enter a plan under this new mandate.

Miscellaneous Provisions effective January 1, 2020

Disclosure regarding lifetime income

- The legislation requires benefit statements provided to defined contribution plan participants to include a lifetime income disclosure at least once during any 12-month period. The disclosure would illustrate the monthly payments the participant would receive if the total account balance were used to provide lifetime income streams, including a qualified joint and survivor annuity for the participant and the participant's surviving spouse and a single life annuity.

- Effective for benefit statements issued 12 months after the release of DOL guidance.

Modification of required distribution rules for designated beneficiaries.

- SECURE eliminates the so-called stretch IRA (which also applies to qualified plans and 403(b) plans). Under current law, after the death of a plan participant or IRA owner, a non-spouse beneficiary is permitted to stretch the required minimum distributions over the beneficiary's life based on his or her life expectancy.

- Under the new law, all amounts held by the plan or IRA must be distributed within 10 years of the plan participant's or IRA owner's death.

- An exception to the 10-year distribution rule is provided for an "eligible beneficiary," which includes a surviving spouse, minor child, disabled or chronically ill individual, or any other beneficiary who is no more than 10 years younger than the participant or IRA owner. An exception is also provided for certain binding annuities in effect on the date of enactment.

- These new distribution rules will generally apply with respect to participants or IRA owners who die after December 31, 2019. However, government plans will apply the new rules to employees dying after December 31, 2021, and collectively bargained plans will apply them to employees dying in calendar years beginning after the expiration of the current collective bargaining agreement or December 31, 2021, if earlier.

For retirement plan administrators and business owners who offer a workplace retirement plan to their employees, the signs are clear: lawmakers are focused on improving the American retirement system through increased—and easier—access to retirement savings vehicles, particularly workplace retirement plans.

To prepare for the SECURE Act's impact on your company's retirement plan, review your plan's provisions and features with your third-party administrator, service providers, and plan advisor. Determine what plan amendments are required, as well as what enhancements can be made. These are good first steps toward setting your company's retirement plan up for future success, given the monumental legislative changes the SECURE Act brings.