

PCA Planning Commentary

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The SECURE Act - Part Three

"Nothing is sure but death and taxes"

Note: This is the third of a three-part overview of the SECURE Act. [Part 1](#) focuses on the changes to IRA distribution planning that will impact many individuals' family income and estate tax planning strategies. [Part 2](#) provided an overview of the benefits individuals may receive as a result of the act, and Part 3 will review changes that impact employers who seek to provide valuable retirement benefits for employees.

Changes to Employers

The SECURE Act impacts nearly all employers who seek to provide quality retirement savings opportunities to their workers, as it includes sweeping legislative changes – the most since the Pension Protection Act of 2006. Employers with affected retirement plans will need to adopt an interim amendment by the 2022 plan year, or a later date if the deadline is extended. Among the many changes are the following:

- A new tax credit of up to \$500 is available for employers that launch a SIMPLE IRA or 401(k) plan with automatic enrollment. The credit applies for three years.
- Employers now have easier access to join multiple employer plans (MEPs) regardless of industry, geographic location, or affiliation. "Open MEPs," as they have become known, offer economies of scale, allowing small employers access to the types of pricing models and other benefits typically reserved for large organizations. (Previously, groups of small businesses had to be affiliated somehow in order to join a MEP.) The legislation also provides that the failure of one employer in a MEP to meet plan requirements will not cause others to fail, and that plan assets in the failed plan will be transferred to another. (This rule is effective for plan years beginning on or after January 1, 2021.)
- There is a significant increase in penalties to employers for failure to file Forms 5500, 8955-SSA and Withholding Notices:
 - The penalty for failure to file the Form 5500 is increased from \$25 to \$250 per day, subject to a maximum of \$150,000. Failure to timely file Form 8955-SSA (Annual Registration Statement) will result in a penalty of \$10 per participant (previously \$1.00). Withholding notices which are not provided timely will incur a penalty of \$100 each, not to exceed \$50,000 in any given calendar year.
- Eligibility requirements for long-term, part-time employees:
 - All 401(k) plans (other than collectively bargained plans) must maintain a dual eligibility requirement, allowing employees to participate in the plan by working three consecutive years (12-month periods) with at least 500 hours, or 1,000 hours in one year. This is effective for plan years beginning after December 31, 2020 for 401(k) plans.

- *Change to requirement for distributing annual safe harbor notice for nonelective contributions:*
 - The requirement to distribute an annual safe harbor notice for nonelective contributions is eliminated. Initial notice must be provided before an employee becomes eligible.
- *Increase in cap on automatic escalation percentage on Qualified Automatic Contribution Arrangements (“QACA”):*
 - For plans using a QACA to satisfy nondiscrimination testing, the percentage of compensation cap under the automatic escalation is increased from 10% to 15% of compensation.
- *Required disclosure of lifetime income:*
 - Defined contribution plan benefit statements must include a lifetime income disclosure at least once during a 12-month period. This requirement is applicable to participant statements furnished more than 12 months after the DOL issues interim final regulations for defined contribution 401(a), 401(k), and ERISA 403(b) plans.
- *Plan sponsors may adopt a safe harbor 401(k) plan mid-year for the 3% nonelective option at any time prior to the 30th day before the close of the plan year (4% if adopted prior to end of the following plan year).*
- Auto-enrollment safe harbor plans may automatically increase participant contributions until they reach 15% of salary. The previous ceiling was 10%.

Conclusion

The recently passed SECURE Act brings many benefits to both individuals and employers. However, as a means of funding the \$1.4 trillion spending package, Congress has curtailed the ability for most individuals to defer paying income tax on their retirement accounts over the lifetime of their beneficiaries. Taxes will be due sooner, and in many cases, at a higher rate. The Act makes profound changes to retirement, education, and estate planning. Individuals and business owners should seek the advice of their professional financial and tax planners to ensure they make any necessary adjustments to accommodate the latest changes to tax legislation.

Please contact the financial planning team at Pallas Capital Advisors to discuss the SECURE Act or any other aspect of your financial planning objectives.

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