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# Employee Benefits Corner

## Year-End Appropriations Bill Brings Big Changes for Qualified Plan Sponsors

By Elizabeth Thomas Dold and David N. Levine

**O**n December 20, 2019, the President signed into law the Further Consolidated Appropriations Act of 2020 (the “Act”), which notably contains the provisions from the Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act,” H.R. 1994). The SECURE Act includes a number of provisions designed to encourage the adoption of employer-sponsored plans and lifetime income options, expand coverage of plans, facilitate the use of certain safe harbor 401(k) plans, expand plan distribution rules, and provide long anticipated nondiscrimination, coverage, and minimum participation for certain types of defined benefit plans. Many of these provisions have been in the works for over 10 years.

A summary of the Internal Revenue Code changes are set forth below, followed by changes required under ERISA (Employee Retirement Income Security Act of 1974, as amended). Many of these changes are mandatory and apply in 2020, so plan sponsors for both defined contribution (DC) and defined benefit (DB) plans and their service providers should coordinate their efforts to ensure compliance.

### Key Tax Law Changes

- **Mandatory Distributions Delay From Age 70-½ to Age 72 (Mandatory, DC/DB).** For employees who turn age 70-½ after December 31, 2019, distribution from an eligible employer plan must be made by April 1 of the calendar year following the year in which the employee turns age 72 (or retires, if later and not a 5% owner).
- **Post-Death Minimum Required Distributions Accelerated (Mandatory, DC).** For DC plans (and IRAs), generally for deaths after December 31, 2019, post-death distributions generally must be made by the end of the 10th calendar year following the year of death. There is limited relief for certain beneficiaries (including spouses).
- **Expanded Safe harbor 401(k) Plan (Optional, DC).** For plan years beginning after December 31, 2019, the 10% maximum deferral rate for a Qualified Automatic Contribution Arrangement (QACA) is replaced with 15% (10% for the participant’s initial year). Also, a QACA and traditional 401(k) plan safe harbor that uses a nonelective employer

contribution does not have to provide an annual participant notice and can be adopted retroactively if certain rules are met.

- **Part-Time Participation for 401(k) Plans (Mandatory, DC).** For 401(k) plan years beginning after December 31, 2020, long-term part-time employees must be permitted to make elective deferrals (but no match is required) once they have (i) reached age 21, and (ii) have worked at least 500 hours in three consecutive 12-month periods (starting in 2021). Special vesting rules apply, and there is nondiscrimination/top-heavy relief.

*As the agencies work to provide needed guidance on these new provisions, plan sponsors and their service providers should review their existing plans and their operations for compliance.*

- **Expanded Small Employer Plan Tax Credits (Optional, DC/DB).** After 2019, small employers (generally under 100 employees) are eligible for up to \$15,000 (rather than \$1,500) over a three year period for start-up costs in connection with establishing a plan and educating participants. There is an additional \$1,500 credit over a three year period for adding an eligible automatic contribution arrangement to the plan.
- **Nondiscrimination, Coverage and Minimum Participation Relief (Optional, DB).** Effective December 20, 2019, rather favorable relief is available to certain DB plans for nondiscrimination rules (including benefits, rights, and features testing), minimum coverage rules, and minimum participation rules under Code Secs. 401(a)(4), 410(b), and 401(a)(26), provided certain specific requirements are met. This relief is broader than the existing relief (and of the relief contemplated in the existing proposed regulations), and for the first time includes valuable minimum participation relief.
- **Expanded Disaster Relief (Optional, DC/DB).** Effective December 20, 2019, similarly to other statutory hurricane relief, participants impacted by nationally declared disasters from January 1,

2018, through Feb. 18, 2020 (other than California wildfires that already have relief), have various tax relief available, including (1) a special \$100,000 loan and distribution with no 10% early withdrawal tax, which can be recontributed within three years, (2) an additional year to pay off a plan loan, repay certain home purchase withdrawals, and (3) taxation over three years. A special plan amendment is required, but not before the end of the 2020 plan year.

- **New In-Service Withdrawal Right for Child Birth and Adoption Expenses (Optional, DC).** For distributions after December 31, 2019, a DC (and IRAs) can permit withdrawals up to \$5,000 (in the aggregate for all plans within the controlled group), with no 10% early withdrawal tax, to a participant for child birth or adoption expenses incurred within a year following birth or legal adoption. These amounts, which are treated as not eligible for rollover, can later be recontributed back into the plan.
- **Lower In-Service Withdrawal Right for Pension Plans (Optional, DB and Money Purchase Pension Plans).** For plan years beginning after December 31, 2019, plan sponsors can lower the in-service distribution right from age 62 to age 59-½. Similarly, for governmental 457(b) plans, plan sponsors can permit distributions at 59-½ rather than age 70-½.
- **Higher Tax Penalties (Mandatory DC/DB).** For returns and statements required to be filed after December 31, 2019, a number of penalties were increased 10 fold, which include the Code's penalties for filing Form 5500, Forms 8955-SSA, withholding notice, and a form disclosing changes to Form 5500 reporting.

There is also a provision that eliminates the use of credit cards for plan loans effective for loans after December 20, 2019, and permits a retroactive adoption of a new plan.

## Key ERISA Changes

- **Pooled Employer Plans (Optional DC).** At long last, an open MEP (multiple employer plan with unrelated employers) is permissible for plan years beginning after December 31, 2020. Specifically, the Act permits unrelated employers (*i.e.*, those without so-called "commonality") to pool their resources by participating in a new type of MEP, provided certain conditions are met. These "Pooled Employer Plans" will be treated as a single plan under ERISA, permitting investment and administrative synergies. The Act also provides some relief from the one-bad-apple rule

to ensure that one bad actor does not disqualify the entire MEP.

- **Lifetime Income Changes (Optional and Mandatory DC).** Effective December 20, 2020, the Act includes very favorable fiduciary relief for plan sponsors electing to add lifetime income products, which are intended to help employees not outlive their retirement savings. And for plan years beginning after December 31, 2019, it also provides for a special distribution option if the lifetime income investments are no longer offered under the plan, so that employees can retain the accrued benefits in an IRA. Lastly, effective for benefit statements furnished more than 12 months after the latest of DOL's publication of an interim final rule or model disclosures and assumptions, the Act requires plan sponsors to disclose the amount of monthly income the participant's Plan benefit will produce in retirement.
- **Combined Form 5500 for Related Plans (Optional DC).** For plan years beginning in 2022, plan sponsors

will have the option to combine 5500 reporting for DC plans that have the same trustee, plan administrator, plan year, and investment options.

## Next Steps

As the agencies work to provide needed guidance on these new provisions, plan sponsors and their service providers should review their existing plans and their operations for compliance. Many of these changes will require updated plan documents, summary plan descriptions, updated beneficiary designation forms, updated distribution forms, participant notices, updated 402(f) rollover notices, and updated policies and procedures. Notably, there is largely amendment timing relief (along with anti-cutback protection) until the end of 2022 (at least), but this requires operational compliance immediately for any mandatory provisions. And as many of the Code provisions apply immediately, there is no time to delay.



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