The SECURE Act of 2019

"Your Green"
Roger Green, MSFS, CFP©
Green Financial Resources

The SECURE Act (Setting Every Community Up for Retirement Enhancement) ("the Act"), was passed by Congress and signed into law by President Trump on December 20, 2019. The Act makes some significant changes to Required Minimum Distribution (RMD) rules as related to Individual Retirement Accounts (IRAs) and other retirement plans, in addition to changes in other areas. This is one of the most comprehensive retirement plan reforms in more than a decade, and this is a brief overview of a few highlights that may be of interest.

One of the most positive changes in the SECURE Act is the elimination of the maximum age for making Traditional IRA contributions. Beginning in 2020, you are allowed to make contributions as long as you (or your spouse) are still working and earning income. Traditional IRA contributions had to stop at age 70 ½ before this change. This allows those still working the opportunity to increase or catch up with their retirement goals.

The SECURE Act also increases the Required Minimum Distribution (RMD) age from age 70 ½ to age 72. This is not a retroactive change, and it only impacts those turning 70 ½ in 2020 or later. If you reached age 70 ½ in 2019 or earlier, then the prior age 70 ½ RMD rules still apply to your situation.

This change may also impact RMDs required from your 401(k) and similar accounts, however, this may require your employer to make a change to the plan language first. Check with your plan administrator to determine the RMD rules for your company retirement plan.

It is important to note that **Qualified Charitable Deduction (QCD)s are not impacted by the SECURE Act, and they may still begin after age 70 ½.** QCDs allow you to gift to charity directly from your IRA account. Although this is not addressed in the Secure Act, it is important to highlight that while IRA owners will not have to start taking RMDs until age 72, they will still be able to make QCDs from those accounts once they reach 70 ½.

Elimination of the stretch IRA. Previously, if you inherited an IRA, you could stretch your distributions and subsequent tax payments out over your lifetime. **Now, non-spouse beneficiaries of inherited IRAs will be required to take their benefits in income on an accelerated basis, a maximum of 10 years from the date of death of the original owner.** For inherited accounts where the original owner died prior to January 1, 2020, the old rules still apply. Because there are some exceptions and special situations surrounding this rule change, if you have any inherited IRA situation, I strongly suggest you seek the advice of a professional for guidance.

Effective January 1, 2020, an individual may take a qualified birth or adoption distribution of up to $5,000 from an IRA or other qualified retirement plan (such as a 401k). The 10% withdrawal penalty will not apply, and you may repay them as a rollover contribution. This distribution must occur during a one-year period which begins on either the date of birth or on the finalization of an adoption of a child under the age of 18.

Previously the Tax Cuts and Jobs Act of 2017 allowed up to $10,000 of 529 Plan funds to be used on an annual basis for K-12 expenses. **The SECURE Act further expands the allowable 529 Plan expense to include apprenticeship programs for fees, books, supplies, and required equipment.** The program must be registered with the Department of Labor to be eligible.

The SECURE Act includes numerous changes that will impact both plan sponsors and participants of employer sponsored plans. The changes are largely intended to incentivize employers – particularly small businesses – to offer retirement plans and promote retirement savings.

The deadlines to set up new employer retirement plans have been relaxed, bringing flexibility to business owners. An employer has until the due date of the company tax return (with extensions) to establish a new plan for the year. Previously, this deadline was the last day of their business year. This change is effective as of January 1, 2020.

Small business owners can receive increased tax credits for starting a retirement plan. Beginning January 1, 2020, the tax credit for the first three years of the plan is equal to $250 per eligible, non-highly compensated employee, subject to a minimum credit of $500 and a maximum of $5,000. **Small employers who add automatic enrollment to their plans may also be eligible for an additional $500 tax credit per year for up to three years.**

To promote additional savings, the SECURE Act allows automatic-enrollment safe harbor plans to increase the cap on automatic contributions from 10 percent to 15 percent of an employee's paycheck. It also gives employees an opportunity to opt out of the increase.

One of the most significant changes is the creation of Pooled Employer Plans (PEPs), that will be treated as a single ERISA plan, – often referred to as Open Multiple Employer Plans (MEPs). Currently, where a plan is sponsored by a group of employers not under common control, they must have certain "commonality" or the arrangement may be treated as multiple component plans for ERISA purposes. The SECURE Act will eliminate the commonality requirement entirely beginning in 2021. Completely unrelated employers can participate without fear of the "one bad apple" rule which stipulates all employers participating in an MEP may face tax consequences if one employer fails to satisfy the tax rules for the MEP. These open MEPs can help deliver low-cost, high-quality retirement plan options to millions of small business employees.

The SECURE Act will permit employers to add a safe-harbor feature to their existing 401(k) plans once the year has started if they make at least a 4 percent of pay contribution to employees (instead of the regular 3 percent). This flexibility would help employers to correct failed top heavy tests by shifting to a safe-harbor plan and making a 4 percent non-elective contribution to participants.

Part-time employees must be covered beginning in 2021 if they satisfy the plan's minimum age requirement, and worked at least 500 hours in each of 3 consecutive 12-month periods. These changes will be effective in 2021, but no 12-month period beginning before January 1, 2021 shall be included. Employer contributions are not required for these employees even if the plan is top heavy, and this group can be disregarded for nondiscrimination testing.

The SECURE Act includes very sharp increases in penalties for retirement plan reporting failures. For Form 5500, the penalties increase from $250 for each day the failure continues to a maximum penalty of $150,000 per late filing. And for Form 8955-SSA, they increase $10.00 per participant per day up to a maximum of $50,000 for failure to file. It will be more important than ever that you stay on top of these tax reporting requirements.

Effective financial planning should include tax, retirement, and estate planning. Some of these areas of tax law are quite complex, and these are only some highlights of the changes that could impact your investment decisions. The information provided is from sources deemed to be reliable, but accuracy is not guaranteed. Tax provisions may be subject further interpretation and clarification. You should consult with your financial and tax professionals about your personal situation before making any changes. **Please call our office at 770-931-1414 or visit us at www.RogerSGreen.com to request a no-cost, no-obligation meeting to discuss the particulars of these changes and how they may impact your situation.** We are here to help!