

SECURE ACT | KEY PROVISIONS AND EFFECTIVE DATES

PROVISION	DESCRIPTION
Effective Date: Immediately (including retroactive application or upon enactment)	
Plan loans through credit cards (or similar arrangements)	Prohibits the issuance of plan loans through credit cards or similar arrangements
“Difficulty of care” payments as compensation	Allows home health workers to contribute to plan (or IRA) by treating difficulty of care payments as compensation for purposes of calculating contribution limits. <i>Effective for qualified plans in plan years beginning after December 31, 2015, and to IRA contributions made after date of enactment</i>
Fiduciary safe harbor for selection of Lifetime Income provider	Adds ERISA Subsection 404(e) to give fiduciaries a prudence safe harbor with respect to the selection of insurers for a guaranteed retirement income contract, protecting such fiduciaries from liability for losses that may result due to the insurer’s inability to satisfy its future financial obligations under the contract. <i>No specific effective date, so applicable on date of enactment</i>
Modification of nondiscrimination rules	Modifies the nondiscrimination rules for closed, defined benefit plans to permit existing participants to continue to accrue benefits (if certain conditions are met). <i>Effective on date of enactment</i>
Qualified disaster distributions ¹	The 10% additional tax on early distributions under Code Section 72(t) does not apply to plan (or IRA) distributions of up to \$100,000 (in the aggregate from all employer-sponsored plans) that are made to an individual whose principal residence is located in a qualified disaster area and who sustains economic loss due to the qualified disaster, subject to certain repayment rights and other restrictions. <i>Generally such distributions must be made within 180 days after the Act’s enactment.</i> The maximum plan loan amount for individuals whose principal residence is in a qualified disaster area is increased from \$50,000 to \$100,000 and loan repayment periods are extended. <i>Plan amendments must be made before the last day of the 2020 plan year (the 2022 plan year for governmental plans)</i>

¹ Provision included in the Taxpayer Certainty and Disaster Tax Relief Act of 2019, Division Q of the Further Consolidated Appropriations Act, 2020.

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PROVISION	DESCRIPTION
Effective Date: Plan Years (or Tax Years) Beginning On or After January 1, 2020	
Minimum age for in-service withdrawals from defined benefit plans and governmental 457(b) plans ²	Reduces the minimum age for in-service withdrawals from defined benefit plans from 62 to 59 ½ and from governmental 457(b) plans from 70 ½ to 59 ½
Automatic enrollment safe harbor cap	Increases the automatic escalation cap from 10% to 15% of pay for years after participant's first "deemed" election year; cap on deemed election for first year is 10%
Election of safe harbor 401(k) status	Plan sponsors may implement non-elective contribution safe harbor 401(k) plan any time before 30th day before end of the plan year (amendments after this deadline allowed if certain conditions met); safe harbor notice requirement for non-elective contributions no longer applies; employees must be able to make or change election once per year
Maximum age for traditional IRA contributions	Repeals the prohibition on contributions to a traditional IRA by an individual who has attained age 70 ½
Portability of lifetime income options	If a lifetime income investment option is no longer authorized to be held as an investment option under the plan, qualified defined contribution plans, 403(b) plans, or governmental 457(b) plans may make a direct trustee-to-trustee transfer to another employer-sponsored plan or IRA in the form of a qualified plan distribution annuity
Penalty-free withdrawals in case of birth or adoption	The 10% additional tax on early withdrawals under Code Section 72(t) does not apply to plan (or IRA) withdrawals used for childbirth or adoption expenses up to \$5,000 (in the aggregate from all employer-sponsored plans); individuals may repay such withdrawals
Increase in age for required minimum distributions	Increases the required minimum distribution age from 70 ½ to 72. <i>Applies to individuals who attain age 70 ½ after December 31, 2019</i>
Plan adoption flexibility	Businesses may treat plans adopted before their tax return due date (including extensions) as having been adopted as of the last day of the tax year

² Provision included in the Bipartisan American Miners Act, Division M of the Further Consolidated Appropriations Act, 2020.

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Required distribution rules for designated beneficiaries	<p>Required minimum distributions from defined contribution plans (or IRAs) to designated beneficiaries other than: (A) the surviving spouse of the employee (or IRA owner), (B) disabled or chronically ill individuals, (C) individuals who are not more than 10 years younger than the employee (or IRA owner), or (D) a child of the employee (or IRA owner) who has not reached the age of majority, are generally required to be distributed by the end of the tenth calendar year following the year of the employee's (or IRA owner's) death.</p> <p><i>Applies to distributions with respect to employees (or IRA owners) who die after December 31, 2019; for governmental plans effective for distributions with respect to employees who die after December 31, 2021</i></p>
Penalties for failure to file	Increases the penalties for failure to file Form 5500 from \$25 per day to \$250 per day (with maximums increasing from \$15,000 to \$150,000 per return)
<p>Effective Date: Plan Years (or Tax Years) Beginning On or After January 1, 2021</p>	
Participation of long-term, part-time employees	<p>Plan sponsors of 401(k) plans must have a dual-eligibility requirement that allows part-time employees who meet the plan's minimum age requirement to participate in the plan's salary deferral portion if they complete either: (A) a one-year-of-service requirement (with the 1,000-hour rule), or (B) at least 500 hours per year for three consecutive eligibility computation periods; requirement does not apply to collectively-bargained plans; plan sponsor may elect to exclude such employees from testing under the nondiscrimination and coverage rules (and from the top-heavy rules).</p> <p><i>Effective for plan years beginning on or after January 1, 2021; provided, however, the 12-month periods beginning before January 1, 2021, shall not be taken into account</i></p>
Multiple Employer Plans / Pooled Employer Plans	Allows two or more unrelated employers to join a pooled employer plan, subject to certain conditions; further guidance and model plan language forthcoming

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PROVISION	DESCRIPTION
Effective Date: Unknown Future Effective Date or Effective for Plan Years (or Tax Years) After December 31, 2021	
Lifetime income disclosure	<p>Benefit statements provided to defined contribution plan participants must include a lifetime income disclosure at least once in any 12-month period.</p> <p><i>DOL directed to develop model disclosure within one year of Act's enactment; requirement applies to statements furnished more than 12 months after DOL issues interim final rules, model disclosure, and assumptions</i></p>
Combined annual report	<p>Defined contribution plans with the same trustee, ERISA fiduciary (or named fiduciary), and administrator that use the same plan year and provide the same investment options are eligible for consolidated Form 5500 filing.</p> <p><i>IRS and DOL directed to effectuate such consolidated filing no later than January 1, 2022, for application to plan year filings after December 31, 2021</i></p>