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SECURE Act Spurs Access, Interest, Retirement Readiness

As retirement plan sponsors and recordkeepers start to think about the SECURE Act's impact, CAPTRUST talks with industry experts about how the new requirements will impact specific participant populations, procedures, and communications. Read on for more about the pluses and minuses of the SECURE Act and what plan sponsors need to consider when it comes to the operational and fiduciary questions still pending guidance from the DOL and IRS.

By now, many of us in the retirement industry have heard much about the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019.

In a nutshell, it's a combination of several bills that were introduced in the last Congress and signed into law at the end of 2019. This new legislation contains a wide variety of provisions aimed at making it easier for employers to sponsor retirement plans and for Americans to access retirement savings at work.

The SECURE Act is big—125 pages and almost 30 provisions—and it's a big deal, according to CAPTRUST Defined Contribution Practice Leader Jennifer Doss. "Expect to hear about it a lot. It is by far the biggest and most impactful piece of legislation for the retirement industry that we've seen since the Pension Protection Act of 2006."

Key provisions of the SECURE Act spur access and interest in the retirement industry in general, says Doss. "A lot of it is about expanding access to qualified retirement plans and improving the retirement readiness of participants," she adds. From opening up plan eligibility rules, to new start-up credits for small businesses and making it easier for plan sponsors to offer guaranteed lifetime income solutions to participants, the SECURE Act maintains consistent support across the retirement industry.

So, without further ado, here are the legislative biggies for plan sponsors, recordkeepers, and administrators, and why they matter.

Long-Term Part-Timers Gain Entry into Retirement Plans

Prior to the passage of the SECURE Act, part-time employees who worked less than 1,000 hours a year could be excluded from participating in a plan. Under the new regulations, employers with 401(k)s will be required to offer employees who work less than 1,000 hours a year the ability to participate in their plans as long as they have worked at least 500 hours for three consecutive years.

For plan sponsors, this means a few things. For starters, "They're going to have this new definition of a long-term employee," says Doss. "It also means plan sponsors and service providers will need to track employees according to special eligibility and vesting schedules, which will impact the plan on many different levels."

"Larger employers are thinking about 'How do we simplify this?'" says Chair of Groom Law Group's Retirement Services and Fiduciary Practice Jennifer Eller, adding that the SECURE Act has some pluses and minuses and, in some ways, is "a pain in the neck for plan sponsors."

Eller explains: "If you have a plan with 20,000 full-time employees and a small number of part-time employees, you don't want to have a tail-wagging-the-dog sort of situation where you're doing a significant amount of work for just a few employees. These plan sponsors may be trying to make some larger change that makes things a little easier."

Doss agrees. "Plan sponsors could change plan eligibility requirements for everyone in order to simplify tracking, but that obviously comes with a cost," she said.

While it's not a top priority for plan sponsors and administrators to solve, because it carries a lengthier effective date (December 31, 2020), Doss advises plan sponsors to start thinking about how the new eligibility requirements will impact their specific participant populations, human resource procedures, and communications.

MEPs on the Rise

A major provision in the SECURE Act could impact retirement plan and product development. This is because an entirely new kind of multiple employer plan (MEP) has been created—it's called a PEP. That stands for pooled employer plan (PEP), and it allows pooled plan providers (PPPs) to sponsor open MEPs known as PEPs. That's a lot of acronyms, even for the financial services industry.

Doss explains that the idea behind open MEPs is a simple one and has always been about "a group of unrelated employers gathering together to aggregate their assets to potentially reduce investment and administrative costs." With a PEP, she says, "you would also see an offload of some of the administrative burdens and fiduciary responsibilities of offering a retirement plan."

Here is the thing Doss wants readers to note about PEPs: They are 401(k) specific. There are no 457(b) PEPs and there are no 403(b) PEPs. "This is a very 401(k)-specific solve meant to encourage primarily small business owners to offer retirement plans to their employees. The legislation is saying, 'Look, we realize that there can be a significant burden on employers associated with offering a retirement plan to their employees, both in terms of cost and risk,' and this is a new opportunity that could make that decision more palatable for employers."

It's worth noting, however, that while PEPs are currently thought to be primarily a start-up or small-plan phenomenon (under $10 million in assets), only time will tell. "We'll have to see how this market evolves. It’s very early innings for PEPs,” adds Doss.

While the SECURE Act did a good job listing out a lot of definitions and details, trying to explain what these things are and who can use them, “there are a lot of operational and fiduciary questions that we still need guidance on from both the Department of Labor (DOL) and from the Internal Revenue Service (IRS),” says Doss. “The most pressing item we need guidance on is related to the PPPs and the participating employers’ fiduciary responsibilities; that segregation of responsibilities is still unclear.”

Related to all MEPs, the legislation also eliminated the one bad apple rule, which has impeded MEP growth for a while, says Doss. “Because laws around MEPs say they are considered to be one plan, when an employer joins a MEP, if, for example, that employer does not submit timely contributions or they don’t follow rules correctly, then the MEP could completely be disqualified because of that one plan, or ‘bad apple.’”

“The SECURE Act leans on the IRS here to come up with what the guidelines are for dealing with a bad apple, which should give some relief both to MEP sponsors and participating plans,” adds Doss.

Lifetime RMDs Delayed

Prior to the SECURE Act, plan participants had to take required minimum distributions (RMDs) by April 1 of the year after reaching the age of 70 1/2. The Act increases the RMD maximum age to 72. The change applies to all plan participants who turn 70 1/2 after December 31, 2019. As a result, many plan participants can now build extra savings.

But plan sponsors are feeling some immediate reverberations of this change, according to Eller.

“At the end of last year or early 2020, there were mailings going out to help participants with their planning, saying, ‘You’re going to turn 70 1/2 in the coming year, and as a result, you need to take distribution,’ so you had some cases where information went out that was out of date by the time it was received, because those mailings couldn’t be pulled back,” she explains.

“From a plan sponsor perspective, the new legislation means working with the plan administrator or record keeper to keep up with two different groups of participants—those that turned 70 1/2 before, and after, December 31, 2019,” says Doss. “Because the change is effective January 1, 2020, plan sponsors essentially have two groups to keep track of now,” she explains, adding that it will be largely a recordkeeping and administrative impact—and one that plan sponsors will need to work with their service providers on to ensure it is being managed correctly.

Depending on the plan type, sponsors will need to evaluate and likely update current policies and procedures for notifying participants of an upcoming RMD trigger date, says Doss. This includes updating any notices sent to participants regarding RMDs. If you’re a plan sponsor, you may also want to think about actively reaching out to participants in this age cohort, recommends Doss. “There could be a lot of confusion right now about what does and does not apply to them.”

Lifetime Income Options

This part of the SECURE Act legislation encourages plan sponsors to offer in-plan annuity options as an investment option or a component of an investment option under the plan. “This is a new safe harbor for annuity provider selection designed to enhance retirement readiness,” Doss explains. The provision provides a liability shield for plans that obtain certain representations indicating the insurer providing the lifetime income product is financially capable of satisfying its obligations.

"The intent was to take some of the pressure off of the fiduciary in terms of having to dust off their crystal ball," says Eller. "This rule essentially makes it easier for fiduciaries to meet the requirements that are imposed, because they don't know what kind of shape an insurance company is going to be in 25 years down the road."

"Many people in the industry feel that this is going to alleviate a lot of plan sponsor concerns around their ability to evaluate insurers issuing these contracts and open up the door for more plan sponsors to add these types of options to their plan," says Doss, adding that until now, there has been no real workable safe harbor for the annuity provider selection.

The SECURE Act isn't just about access, it's about getting people to a more confident retirement, Doss says. "And that includes expanding and encouraging the use of more annuities within retirement plans with this new legislation. I think we'll see a lot of innovation in this space in the coming years as a result of the safe harbor."

Eller agrees. "I think it would be, in many ways, useful to plan sponsors and plan participants if there were more lifetime income options in plans. And I think the basic reason for resistance or uncertainty about including lifetime income options really has to do with understanding how those products work and dealing with the tradeoffs."

The SECURE Act also provides for tax-advantaged portability (trustee-to-trustee transfers) of lifetime income investments to an individual retirement account (IRA) or another qualified plan if the investment is no longer authorized to be held under the plan. This will permit participants to preserve their lifetime income guarantees and avoid surrender charges and fees.

Doss notes, though, that the issuance of this new safe harbor does not negate the requirement of plan sponsors to conduct a thorough and analytical search for the best annuity provider and to compare costs. "Those are still key and necessary components of the decision to add this type of product to a retirement plan. Plan sponsors should work with their investment consultants to conduct this evaluation," says Doss.

Income Projections on Participant Statements

The new legislation requires benefit statements based on DOL calculation criteria to include an estimate of the monthly income a participant could receive in retirement if they purchased a qualified joint and survivor annuity or a single life annuity.

Doss explains that the SECURE Act requires these lifetime income disclosures and estimates are provided at least annually, regardless of whether any annuity distribution option is offered under the plan.

"There is definitely more to come on this one," she adds. "The DOL is going to be providing model disclosures and specified assumptions for plans to leverage as they prepare these benefit statements."

While the requirements do not take effect until one year after the DOL issues the final rules on this provision, Doss recommends plan sponsors and recordkeepers start to think about the impacts to their participant populations and how they can help educate them on this topic. "It could be very confusing to participants, and they could have a lot of questions about what it means."

Penalty-Free Withdrawals for Qualified Birth or Adoption

Penalty-free withdrawals for adoption with the new SECURE Act is a welcome addition for parents looking for a new source of money to tap into to help with any expenses tied to adding a new child to the family.

The SECURE Act allows retirement plan account holders to take up to a $5,000 penalty-free distribution as a "qualified birth or adoption distribution" within one year of a birth or adoption. That $5,000 amount applies on an individual basis, so for a married couple, each spouse may receive a penalty-free distribution up to $5,000 for a qualified birth or adoption—for a total of $10,000.

"It's great—it creates a new distributable event, and it allows the participant to pay it back," says Doss, adding that this is one of the SECURE Act's provisions that plan sponsors and recordkeepers are waiting on guidance from the IRS. "The industry needs clarity on how this is going to work operationally, and we need to know what plan sponsors can do to be protected."

According to Eller, as long as uncertainty remains about the rules for penalty-free retirement plan withdrawals for qualified birth or adoption, expect to see slow adoption and implementation of legislation. "No one's going to want to do this without knowing what the rules are," she explains.

Right now, there isn't a time frame on how long a person has to pay it back or direction on how plan sponsors are to verify employee eligibility, says Doss. "Clearly, whether to offer this benefit is a decision plan sponsors will need to make on an individual basis." Lastly, Doss points out that plan sponsors who choose to offer this special distribution will need to update their plan documents to account for another distributable event.

According to Doss, "The time is right for plan sponsors to get a good handle on what the SECURE Act means for them." She suggests they team with the plan's recordkeeper, ERISA attorney, and investment consultant, for help though this process. "There are a lot of provisions that were required and that became effective January 1, which left providers and plan sponsors scrambling," says Doss. "After those are figured out, plan sponsors can start to think, 'Okay, what are the optional or farther-out provisions that we may want to evaluate for our plan or that may impact us?'"

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