



The Certified Employee
Benefit Specialist® Program

RPA1 Directing Retirement
Plans—Part 1

RPA2 Directing Retirement
Plans—Part 2

Study Materials Update—March 2020

This material is required reading for purposes of the CEBS® program and the national exams for the RPA 1 and RPA 2 courses administered on or after April 15, 2020.

A JOINT PROGRAM OF



How to Use This Update

Keep this update with your study materials. It should be read in conjunction with the assigned reading for RPA 1 and RPA 2.

RPA 1: Directing Retirement Plans Part 1, RPA 2: Directing Retirement Plans Part 2 and

Background

At the end of December 2019, the House and Senate approved the Further Consolidated Appropriations Act (FCAA) of 2020, the legislative package of spending bills necessary to keep the federal government funded and operational and avert government shutdown. This legislative package included the Setting Every Community Up for Retirement Enhancement (SECURE) Act. FCAA also included bills providing disaster relief and new health and welfare provisions. The most significant health and welfare measure repealed the controversial *Cadillac Tax*, which had imposed a 40 percent excise tax on the most expensive employer-sponsored health insurance plans when benefits exceeded a certain threshold. This tax, which originally was to become effective in 2018 but was previously delayed until 2022, is now permanently repealed.

The provisions of the SECURE Act are extensive. The SECURE Act provides the most comprehensive retirement reform package in over a decade.

Student Note: As noted above, the SECURE Act entails significant changes to prior law. This update is being provided to acquaint CEBS students with these changes and to update the course material for RPA 1, RPA 2 and the Strategic Benefits Management course (GBA/RPA 3). Again, the changes are significant. Accordingly, every effort is being made to highlight the changes and present them in a manner that is manageable for understanding and comprehension. This update provides the following.

I. An Overview—SECURE Act: The Wait Is Finally Over

This overview, published by Ascensus®, arranges the legislative changes by policy themes so that students can connect modifications in the law to policy objectives and thus understand the intended outcomes of the SECURE Act. Each bulleted item provides a brief description of the legal change followed by an italicized note on when the provision becomes effective.

Students are expected to be familiar with the overview. CEBS-related content from the overview is subject to inclusion on CEBS examinations effective on or after April 15, 2020.

II. A More Detailed Explanation of Specific, High-Profile Changes

These more detailed explanations highlight certain provisions of the Act whose impact is likely to be widely applicable to plan sponsor issues relating to strategic plan design or participant retirement planning decisions.

Students are expected to be familiar with these more detailed explanations. Content from these more detailed explanations is subject to inclusion on CEBS examinations effective on or after April 15, 2020.

III. Final Regulations Not Associated With the SECURE Act

This section contains information on regulations regarding retirement plan hardship distributions. The Bipartisan Budget Act of 2018 (BBA) contained provisions to change the hardship distribution rules. Proposed regulations were subsequently issued, and final regulations were issued in late 2019. Though plan sponsors were able to implement many of these regulatory provisions in 2019 based upon the previously issued proposed regulations, the changes are being included in this update since plan sponsors are now required to abide by the regulations beginning on January 1, 2020, if they had not previously adopted them.

Students are expected to be familiar with these final regulations. Content from the final regulations is subject to inclusion on CEBS examinations effective on or after April 15, 2020.

Student Note: Given the extensive changes mandated by the SECURE Act, there will invariably be significant regulatory advice forthcoming to clarify various provisions of the legislation. When such clarifications are issued, it is anticipated that there could be future updates issued for these courses. As is the case with this update, students in the CEBS program will be advised as to when the material contained in any updates will be included on the CEBS national examinations.



Washington Pulse

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SECURE Act: The Wait is Finally Over

For the past three years, Congress has attempted to pass major retirement reform legislation. It has finally succeeded with the year-end passage of two spending packages meant to avert a government shutdown. One of the packages, the [Further Consolidated Appropriations Act, 2020 \(FCAA\)](#), includes multiple bills—including the Setting Every Community Up for Retirement Enhancement (SECURE) Act, which contains several major retirement-related provisions. These provisions are nearly identical to those included in an earlier version of the SECURE Act that was passed by the U.S. House of Representatives in May 2019. At the time of this publication, the President had not yet signed these bills into law. But it is widely anticipated that he will.

The SECURE Act provides the most comprehensive retirement reform package in over a decade. The primary goals of the SECURE Act are to expand retirement savings, improve plan administration, simplify existing rules, and preserve retirement income. The provisions summarized below will certainly give rise to questions in the coming days. Our aim is to provide an easy reference to the important retirement plan changes, while understanding that more federal guidance will be needed to resolve certain matters.

The FCAA also includes bills that provide disaster relief (discussed later) and new health and welfare provisions. The most significant health and welfare measure repeals the controversial “Cadillac Tax.” The Affordable Care Act had created a 40 percent excise tax on the most expensive employer-sponsored health insurance plans when benefits exceeded a certain threshold. This tax was supposed to become effective in 2018, but was previously delayed until 2022.

New Incentives to Establish or Enhance Employer Plans

The following SECURE Act provisions create new incentives and modify existing incentives for employers to establish retirement plans. They also broaden the time frame for employers to establish plans.

- **Multiple employer plans (MEPs).** Employers can more easily participate in a MEP or a new variant, a “pooled employer plan,” or PEP. Both have basic features in common, the latter to be administered by a pooled plan provider. *(Effective for 2021 and later plan years.)*
 - Multiple participating businesses with a common interest would generally be part of a MEP.
 - Multiple participating businesses with no common interest other than plan sponsorship would generally be part of a PEP.
 - Smaller MEPs and PEPs may be able to file a simplified short Form 5500-SF tax return for the plan.
 - Noncompliance by one participating employer will not disqualify the entire MEP/PEP arrangement, thus eliminating the “one bad apple” rule.
- **Deadline to establish a plan.** Employers may establish a qualified plan—such as a profit sharing or pension plan—as late as their business tax filing deadline, including extensions. (Under previous rules, employers had

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until the last day of their business year.) This extension will not apply to certain plan provisions, such as elective deferrals. *(Effective for 2020 and later taxable years.)*

- **Small employer plan startup credit.** The small employer retirement plan startup tax credit increases from \$500 to a maximum of \$5,000 per year, available to cover startup costs for the first three years that the plan is in effect. *(Effective for 2020 and later taxable years.)*
- **Automatic enrollment credit.** The SECURE Act provides a new tax credit to employers that include an automatic enrollment feature in their new or existing small 401(k) plans (100 or fewer employees) or SIMPLE IRA plans. The maximum annual tax credit is \$500 for each of the first three years that the plan is maintained. *(Effective for 2020 and later taxable years.)*
- **Election of 401(k) nonelective safe harbor design.** Employers that make nonelective safe harbor plan contributions (versus a matching contribution) get two benefits: 1) they now escape the notice requirement, and 2) they have more time to amend their plans to implement this nonelective 401(k) safe harbor plan feature. Specifically, they may amend up to 30 days before the end of a plan year if they make a three percent contribution. But they may generally amend by the close of the following plan year if the plan is also amended to require a four percent nonelective safe harbor contribution. *(Effective for 2020 and later plan years.)*
- **Annuity selection safe harbor.** The SECURE Act creates a new safe harbor for a plan fiduciary to meet ERISA's "prudent man rule" when selecting an insurer and an annuity contract in order to offer lifetime income options under a plan. *(Effective on date of enactment.)*

New Ways to Save More in Employer Plans

The next set of provisions lets employers automatically increase employees' deferral contributions to a higher percentage, requires employers to give participants a future benefits projection, and promotes plan entry for certain part-time employees.

- **Higher cap on deferrals in safe harbor 401(k) plans.** Some 401(k) plans meet nondiscrimination requirements through automatic enrollment and automatic deferral increases. These qualified automatic contribution arrangements (QACAs) will now have a maximum 15 percent deferral rate instead of 10 percent. *(Effective for 2020 and later plan years.)*
- **Lifetime income disclosure.** Defined contribution plans must provide, at least annually, a projected lifetime income stream that a participant's accrued benefit could generate. This disclosure does not create employer liability for the amounts projected. *(Effective for benefit statements provided more than 12 months after the DOL issues guidance, including the interest assumptions to be used and a model disclosure. The bill prescribes that this guidance be completed within one year of the date of enactment.)*
- **Participation by less than full-time employees.** Employees who have three consecutive 12-month periods of 500 hours of service and who satisfy the plan's minimum age requirement must be allowed to make elective deferrals in an employer's 401(k) plan. The current, more restrictive, eligibility rules could continue to be applied to other contribution sources (e.g., matching contributions) and to ADP/ACP safe harbor plans. Employers may also exclude such part-time employees from coverage, nondiscrimination, and top-heavy test rules. *(Effective for 2021 and later plan years, but no 12-month period that begins before January 1, 2021, shall be taken into account.)*

More Targeted Provisions Affecting Employer Plans

The SECURE Act contains a number of additional, more targeted provisions that apply to employer plans.

- **Custodial accounts of terminating 403(b) plans.** Plan administrators or custodians of a 403(b) custodial account may distribute the account “in kind” to a participant or beneficiary when the employer is terminating the 403(b) plan. *(Retroactive; effective for 2009 and later taxable years.)*
- **Lifetime income portability.** Participants in a qualified plan, 403(b) plan, or governmental 457(b) plan may roll over lifetime income investments to an IRA or another retirement plan without a traditional distribution triggering event if their plan no longer permits such investments. *(Effective for 2020 and later plan years.)*
- **Higher penalties for plan reporting failures.** Retirement plan information reporting failures will result in the following increased penalties. *(Effective for filings and notices required January 1, 2020, and thereafter.)*
 - Form 5500, \$250 per day, up to a maximum of \$150,000
 - Form 8955-SSA (deferred benefit reporting), \$10 per day, up to a maximum of \$50,000 for failing to file, \$10 per day, up to a maximum of \$10,000 for failing to file a notification of change
 - Withholding notices, \$100 per failure, up to a maximum of \$50,000 for all such failures during any calendar year
- **Credit card loan prohibition.** Retirement plan loans enabled through a credit card (or a similar program) will be treated as distributed from the plan and subject to taxation. *(Applies to loans made after the date of enactment.)*
- **Shared Form 5500 filing.** Employers sponsoring defined contribution plans that have the same trustee, administrator, fiduciaries, plan year, and investment options may file a common Form 5500. *(Effective for 2022 and later plan years.)*
- **Nondiscrimination relief for closed pension plans.** Defined benefit pension plans that are closed to new participants will get nondiscrimination relief that protects benefits for older, longer serving participants. *(Effective upon enactment, or—if elected—for 2014 and later plan years.)*
- **Community newspaper pension funding relief.** Sponsors of certain plans maintained for community newspapers may calculate defined benefit plan contributions with interest rates and amortization periods that reduce funding requirements. *(Effective for plan years ending after December 31, 2017.)*
- **Church retirement plan rules.** New rules clarify which employees may participate in retirement plans sponsored by church-controlled organizations. *(Effective for past, present, and future plan years.)*
- **Pension plans of cooperatives and charities.** Certain cooperatives and charities may reduce their Pension Benefit Guaranty Corporation (PBGC) insurance premiums for defined benefit plans. *(Effective for 2019 and later plan years.)*
- **Lower minimum age for in-service distributions.** This provision is not part of the SECURE Act, but is found in Division M—the Bipartisan American Miners Act, which is part of FCAA. This provision allows in-service distributions at age 59½ (instead of age 62 under current law) to participants in governmental 457(b) plans and certain pension plans. *(Effective for 2020 and later plan years.)*

New Provisions Affecting Employer Plans and IRAs

The following SECURE Act provisions affect both employer plans and IRAs.

- **More rapid payouts to nonspouse (and other) beneficiaries.** Most nonspouse beneficiaries of IRAs, qualified defined contribution plans, 403(b) plans, and governmental 457(b) plans will generally be required to distribute inherited amounts within 10 years. *(Effective for plan participant/IRA owner deaths in 2020 or later years; 2022 or later years for governmental plans; special delay to accommodate contracts of certain collectively bargained plans.)* Exceptions include those who, at the time of the account owner's death, are
 - disabled individuals,
 - certain chronically ill individuals,
 - beneficiaries whose age is within 10 years of the decedent's age,
 - minors (they would begin a 10-year payout period upon reaching the age of majority), and
 - recipients of certain annuitized payments begun before enactment of the SECURE Act.
- **Delayed age for beginning RMDs.** The age when required minimum distributions (RMDs) from Traditional IRAs, qualified plans, 403(b) plans, and governmental 457(b) plans must generally begin is increased from age 70½ to age 72. *(Effective for distributions required in 2020 and later years, for those who reach age 70½ in 2020 or a later year.)*
- **Birth/adoption excise tax exception.** The birth of a child or adoption of a child (or individual who is incapable of self-support) qualifies both as a plan distribution event and as an amount that is exempt from the 10 percent early distribution penalty tax (if applicable) for distributions of up to \$5,000 in aggregate from IRAs and defined contribution qualified plans, 403(b) plans, and governmental 457(b) plans. These amounts may be repaid. *(Effective for distributions in 2020 and later years.)*
- **"Difficulty of care" payments treated as eligible compensation for retirement plan funding.** Because many home healthcare workers receive payment that is not taxable income, they haven't been able to contribute to a retirement plan. Now such "difficulty of care" payments will qualify as eligible compensation for IRA and other plan contributions. *(Effective upon enactment for IRAs, and for 2016 and later plans years for employer plans.)*

More Flexibility for IRA Contributions

The following provisions specifically affect IRAs.

- **Traditional IRA contributions at any age.** Taxpayers with earned income can make Traditional IRA contributions at any age, not just for years before reaching age 70½, as under current law. *(Effective for 2020 and later taxable years.)*
- **Graduate student IRA contributions.** Certain stipend, fellowship, and similar payments to graduate and postdoctoral students will be treated as earned income for IRA contribution purposes. *(Effective for 2020 and later taxable years.)*

New Eligible Expenses for 529 Plans

The SECURE Act also broadens the definition of eligible expenses for qualified tuition or "529" plans. Individuals may now take a qualified, tax-free 529 plan distribution to pay for registered apprenticeships. They may also distribute up to \$10,000 in order to make repayments of student loans for a 529 plan beneficiary—or a beneficiary's sibling. *(Effective for distributions in 2019 and later years.)*

Disaster Relief Provisions

To provide relief for certain natural disasters that occurred during the last couple of years, the FCAA contains a bill entitled the Taxpayer Certainty and Disaster Tax Relief Act of 2019. Among other things, this bill provides disaster relief to individuals in presidentially declared disaster areas who have taken IRA and retirement plan distributions between January 1, 2018, and 180 days after enactment of this legislation. *(Applicable to plans that are amended on or before the last day of the first plan year beginning on or after January 1, 2020, or later, if the IRS allows.)*

- **Qualified disaster distributions.** Qualifying distributions of up to \$100,000 from employer-sponsored retirement plans and IRAs are exempt from the 10 percent early distribution penalty tax and the normal withholding requirements. Individuals affected by more than one disaster may distribute up to \$100,000 per disaster.
- **Repayment options.** Individuals may repay qualifying distributions within a three-year period. Distributions not repaid generally will be taxed ratably over a three-year period, unless individuals elect otherwise. Individuals may also repay distributions taken for cancelled home purchases.
- **Relaxed loan requirements.** Employers may allow participants to request a plan loan of up to \$100,000. Participants may delay loan repayments for up to one year.

Effective Dates and Amendment Deadlines

Some effective dates are mere days away—January 1, 2020. These dates were retained from the May 2019 version of the legislation. But the final version of FCAA contains delayed amendment deadlines for employer-sponsored retirement plans. This will allow employers to implement changes immediately, while generally having until the end of their 2022 plan year (2024 for governmental and collectively-bargained plans) to amend for the changes.

As with any major piece of legislation, questions will arise as provisions are analyzed. We expect the IRS and Department of Labor to address these concerns in the coming months. Ascensus will continue to assess the effect of this legislation and any related guidance. Visit [Ascensus.com](https://www.ascensus.com) for future updates.

II.

A More Detailed Explanation of Specific High-Profile Changes

A. Multiple employer plans (MEPs)

The Trump administration, some financial services providers and others perceive multiple employer plans (MEPs) as an effective means by which to make employee benefit plans accessible to employees of small employers. The employee benefits industry of late has categorized MEPs into three categories: corporate MEPs, association MEPs and open MEPs. These categories are not specified by either the Employee Retirement Income Security Act (ERISA) or the Internal Revenue Code, but have evolved as industry descriptors.

- *Corporate MEPs* are comprised of two or more companies that participate in an employee benefit plan and share some type of ownership or control element.
- *Association MEPs* consist of two or more companies that do not share a common ownership or control relationship but have some type of connection other than the provision of employee benefits. Typically, the companies belong to an association that offers a variety of services to its members, such as professional networking, professional education, and representation before federal, state, and local governments and their respective agencies. The companies normally pay an annual or other periodic fee to be a member of the association in order to obtain these services. A benefit of membership also may include access to employee benefit plans made available to association members. The association or its affiliate is the sponsor of the plans and provides administrative or other services to the plans. Additionally, much of the fiduciary responsibility related to the plan is borne by parties other than the association members.
- *Open MEPs* are comprised of two or more companies that lack a common ownership or control structure and that also lack a connection through membership in an association as described immediately above. In an open MEP, the only connection among the participating employers is participation in the employee benefit plan.

The SECURE Act allows two or more unrelated employers to join together to sponsor a qualified retirement plan for their workers without limitations, known as an open MEP. MEP participation no longer requires participating employers to share a common connection, such as the same industry or geographic area, outside of the retirement benefit they are jointly providing via the MEP. Previously the requirement for a common connection had prevented many employers from participating in MEPs, leaving them with the alternatives of sponsoring their own single employer plan or not offering a retirement plan at all. The SECURE Act allows different employers lacking a common connection to participate in an open MEP, which would be administered by a third party *pooled plan provider*, such as a financial services firm. The pooled provider is required to acknowledge

in writing that it is the plan's named fiduciary under ERISA and that the plan administrator responsible for performing all duties reasonably necessary to ensure that the pooled plan provider complies with the applicable Internal Revenue Code requirements and ERISA. Each participating employer in the open MEP would be treated as the plan sponsor with respect to the portion of the plan attributable to that employer's employees (or beneficiaries of such employees). This means that the participating employers' only responsibility would be the selection and monitoring of the pooled plan provider. The open MEP framework allows a sponsor to (1) consolidate and outsource fiduciary functions (including higher risk activities like investment menu design), (2) gain access to cost-efficient institutional investment options and (3) reduce plan administrative expenses. The open MEP framework could appeal to all size employers looking to shield themselves from ERISA fiduciary liability.

B. Annuity selection safe harbor

The SECURE Act enacts ERISA section 404(e) providing a new, optional safe harbor for the prudent selection of a guaranteed retirement income contract (GRIC) on behalf of an individual account plan. The term *guaranteed retirement income contract* includes both payout products and products providing for the accumulation of retirement income guarantees on an in-plan basis. The SECURE Act defines GRIC as "an annuity contract for a fixed term or a contract (or provision or feature thereof) which provides guaranteed benefits annually (or more frequently) for at least the remainder of the life of the participant or the joint lives of the participant and the participant's designated beneficiary as part of an individual account plan."

This new safe harbor allows satisfaction of conditions related to assessing the insurer's financial strength where the insurer delivers certain written representations to the selecting fiduciary. The safe harbor deems the selecting fiduciary to have fulfilled the conditions related to the adequacy of the insurer's financial capabilities upon receipt of a specified set of written representations. It should be noted that after receiving the written representations, the fiduciary must not have received notice of any change in the insurer's circumstances or other information that would cause the fiduciary to question the prior representations. The representations to be provided by the insurer include the following.

1. The insurer is licensed to offer guaranteed retirement income contracts.
2. The insurer at the time of selection and for each of the immediately preceding seven plan years:
 - Operates under a certificate of authority from the insurance commissioner of its domiciliary state that has not been revoked or suspended.
 - Has filed audited financial statements in accordance with the laws of the domiciliary state.
 - Maintains and has maintained reserves which satisfy all the statutory requirements in states in which the insurer does business.
 - Is not operating under an order of suspension, rehabilitation or liquidation.
3. The insurer undergoes, at least every five years, a financial examination by the insurance commissioner of its domiciliary state.
4. The insurer will notify the fiduciary of any change in circumstances after providing the above representations, which would preclude the insurer from making such representations at the time of issuance of the contract.

A fiduciary is viewed as performing a periodic review if it receives the written representation from the insurer on an annual basis, unless it receives the notice of a change in circumstances or it becomes aware of facts that would cause the fiduciary to question the insurer's representations.

A fiduciary is not expected to select the lowest cost contract and may consider the value of the contract—including such features, benefits and attributes of the insurer (including the insurer's financial strength)—in conjunction with the cost.

Where a fiduciary satisfies the preceding conditions, it is relieved of all liability for any losses that may result due to an insurer's inability to satisfy its financial obligations under the contract with respect to the distribution of any benefit, or an investment in the contract by or on behalf of a participant or beneficiary pursuant to the selected annuity contract.

C. Lifetime income disclosure

The SECURE Act amends ERISA section 105 requiring individual account plans to add a *lifetime income disclosure* to at least one pension benefit statement furnished to participants during a 12-month period. The new lifetime income disclosure must express a participant's total accrued benefit as a *lifetime income stream*. Such lifetime income stream would be characterized as the monthly payment amounts that a participant or beneficiary would receive if the account balance were applied to provide a lifetime income stream, based on assumptions to be specified by the Department of Labor (DOL). Two sets of lifetime income streams are required. The first is a qualified joint and survivor lifetime income stream, based on the assumption that the participant has a spouse of equal age. The second lifetime income stream is a single life annuity.

The DOL is granted the flexibility either to prescribe a single set of assumptions or ranges of permissible assumptions. The DOL is required to issue interim final rules within one year of the SECURE Act's enactment (i.e., being by December 20, 2020). The DOL will also issue within that one-year period a model lifetime income disclosure. The *model lifetime income disclosure* is required to contain a series of prescribed explanations including explanations (1) that the lifetime income stream illustration is merely an illustration; (2) that if the participant's total accrued benefits were actually applied to the purchase of a lifetime income stream, the monthly amounts payable could vary substantially from the amounts illustrated; and (3) of the assumptions on which the lifetime income stream equivalents are determined.

Plan fiduciaries, plan sponsors and all other persons are relieved from any liability under Title I of ERISA for providing lifetime income disclosures to participants assuming that the disclosures are based upon the assumptions and rules specified by the DOL and include the explanations contained in the DOL's model lifetime income disclosure.

D. More rapid payouts to nonspouse (and other) beneficiaries

The SECURE Act revises post-death required minimum distribution (RMD) rules for defined contribution plans, effective for participant deaths occurring after December 31, 2019 (and after December 31, 2021 for governmental plans). Under current rules, RMD timing requirements differ depending upon whether the participant dies before the required beginning date, or on or after such date, and whether the participant has a designated beneficiary. The SECURE Act changes the post-death RMD rules for plans (other than defined benefit plans) to require that all distributions after death be made by the 10th calendar year following the year of death unless the designated beneficiary is an eligible designated beneficiary. There are no required minimum distributions within those ten years, but by the end of the tenth year following the account owner's death, the entire balance of the account must be distributed. An *eligible designated beneficiary* is (1) a surviving spouse, (2) a minor child, (3) a chronically ill individual or (4) any individual who is not more than ten years younger than the participant. This new provision is not applicable to qualified annuities commenced prior to enactment of the SECURE Act.

Under prior law, a *designated beneficiary* of an inherited retirement account could generally “stretch” distributions over his or her life expectancy. This option is now only available to the limited classes of eligible designated beneficiaries described in the preceding paragraph. As under the prior rules, all non-individual designated beneficiaries, such as charitable organizations or estates, must withdraw all retirement account funds within five years of the account owner's death.

The new rules have a significant impact on trusts named as the beneficiary of retirement plan assets. Some types of trusts, primarily conduit trusts and accumulation trusts, previously could be established to favorably and tax efficiently sequence distributions. Many of the advantages formerly associated with use of a trust as a beneficiary are no longer valid.

E. Delayed age for beginning required minimum distributions (RMDs)

Prior to passage of the SECURE Act, participants were generally required to commence taking RMDs from their retirement accounts (other than from a Roth IRA) beginning as of April 1 of the year following the year in which the individual attained age 70½. To reflect the increase in life expectancy, the minimum distributions age has been raised to age 72, effective for distributions made after December 31, 2019, with respect to individuals who attain age 70½ after that date.

F. Traditional IRA contributions at any age

The SECURE Act repeals the prohibition on contributions to a traditional IRA by persons over the age of 70½, effective for years beginning after December 31, 2019.



Effect of Final Regulations Not Associated With the SECURE Act

The previously enacted Bipartisan Budget Act of 2018 (BBA) contained provisions to modify hardship distribution rules. Proposed rules were subsequently issued. Then in late September of 2019, the Internal Revenue Service (IRS) issued its final hardship distribution regulations. A synopsis of the rules is as follows.

A. The regulations implemented a uniform standard for determining financial necessity and instituted a participant representation requirement.

Plans must apply a uniform standard for determining whether the hardship is necessary to meet any financial need. The participant must first take all distributions available to them under the plan or any other plan sponsored by their employer. The participant must provide representation that he or she has insufficient cash or other liquid assets reasonably available to satisfy the financial need. Money earmarked for near-term expenses, such as rent, need not be considered. The representation may be in writing or by an electronic medium or other forms acceptable to the IRS. The employer need not investigate the representation but should deny the hardship distribution if the employer possesses knowledge that is contrary to the participant's representation. This rule is effective for hardship distributions made on or after January 1, 2020.

B. Participants are no longer required to take a loan before receiving a hardship distribution.

An employer could still require that a loan, if offered under the plan, be taken before allowing a hardship distribution. However, few, if any, employers are likely to mandate the need to take a loan before being eligible for a hardship withdrawal. This rule is effective for hardship distributions made on or after January 1, 2020.

C. Elimination of the six-month deferral suspension

Under prior hardship rules, employees were required to discontinue deferring money under the plan for six months after they accessed hardship distributions. Under the new law, this restriction has been eliminated and participants may continue plan deferrals following a hardship distribution. Plan sponsors are prohibited from implementing suspensions of deferrals for hardship distributions made on or after January 1, 2020.

D. Clarification of the casualty loss safe harbor event and the addition of a new safe harbor hardship distribution event

The IRS clarified that casualty losses for hardships are not tied to a federal disaster, so the prior rules for casualty losses are applicable. Also, the BBA included another safe harbor event for expenses and losses (including loss of income) incurred by an employee on account of a disaster declared by the Federal Emergency Management Agency (FEMA), provided that the employee's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster. This rule is effective for hardship distributions made on or after January 1, 2020.

E. Expansion in the categories of money from which participants can receive a hardship distribution from a 401(k) plan account or from a 403(b) annuity contract

Under the BBA law, participants can access hardship distributions from all accounts including:

- Deferrals, vested matching and other employer contributions
- Safe harbor contribution accounts
- Qualified nonelective contributions (QNECs)
- Qualified matching contributions (QMACs)
- Earnings for all eligible sources including post 12/31/1988 earnings on elective deferrals. (Note: This is not allowable for 403(b) plans currently.)

Important note: 403(b) plans that are in custodial accounts cannot allow hardship distributions from these additional contribution sources. Participants in custodial 403(b) plans cannot take hardship withdrawals from safe harbor, QNEC or QMAC accounts, or from post-1988 earnings in deferral accounts.

This rule is effective for hardship distributions made on or after January 1, 2020.