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THE SECURE ACT BRINGS BIG CHANGES FOR RETIREMENT PLANNING

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By Stephanie S. Vogel

The Setting Every Community Up for Retirement Enhancement Act (the SECURE Act), which is part of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94, 12/20/2019), was signed into law by President Trump on 12/20/2019. The Act significantly modifies many requirements for employer-provided retirement plans, individual retirement accounts (IRAs), and other tax-favored savings accounts. Provisions of the SECURE Act are generally effective for tax years/ plan years beginning after December 31, 2019 but there are some exceptions. These changes will require that your retirement plan, trust, or other documents be amended.

The following are significant provisions of the SECURE Act:

- **Lifetime income disclosure required for defined contribution plan participants' annual/ quarterly notices**. The administrator of a defined contribution plan (*i.e.,* a 401(k) plan) must provide annual benefit statements to participants (or quarterly statements if the participant has the right to direct investment of assets in the account). The SECURE Act now requires that these benefit statements include lifetime income disclosure information. The Secretary of the Department of Labor must issue a model lifetime income disclosure, prescribe assumptions that individual account plan administrators may use to convert total accrual benefits into lifetime income stream equivalents for purposes of the disclosure, and issue interim final rules by December 20, 2010. Pension benefit statements must include disclosures regarding lifetime income effective for pension benefit statements furnished more than 12 months after the latest of the three actions described above.
- **Limited availability of stretch IRAs**. For deaths of IRA owners before 2020, beneficiaries were generally allowed to "stretch out" remaining IRA required distributions over the designated beneficiary's life expectancy. However, for IRA owners who die beginning in 2020, distributions to most non-spouse beneficiaries are generally required to be made within 10 years following the plan participant's or IRA owner's death rather than ratably over the beneficiary's remaining life expectancy. Beneficiaries do not have to take annual distributions but they must empty the IRA account by the end of the 10th year following the IRA owner's death or face penalties of 50% of the amount they failed to withdraw. Exceptions to this new 10-year rule are allowed for distributions to (1) the surviving spouse of the IRA owner; (2) minor children of the IRA owner until they are 18 or 21 (depending on their home state, after which they will have an additional 10 years to deplete the IRA); (3) a disabled or chronically ill individual; and (4) any other individual who is not more than 10 years younger than the plan participant or IRA owner. Those beneficiaries who qualify under this exception may generally still take their distributions over their life expectancy, except for minors once they reach majority unless another exception applies (as allowed under the rules in effect for deaths occurring before 2020). *You should review your IRA/ retirement plan beneficiaries for this change.*
- **No more maximum age for traditional IRA contributions.** Starting in 2020, the new rules allow an individual of *any age* to make contributions to a traditional IRA, as long as the

individual has compensation (earned income from wages or self-employment, generally). Previously, traditional IRA contributions were not permitted once individuals attained age 70.5.

- **Required minimum distribution ("RMD") age raised from 70.5 to 72**. Beginning on 1/1/2020, individuals must begin taking distributions from their retirement plan or IRA at age 72 instead of 70.5. Individuals who attain age 70.5 prior 1/1/2020 must still commence RMDs at age 70.5.

- **Expansion of Section 529 education savings plans to cover registered apprenticeships and distributions to repay certain student loans.** For 529 Plan distributions made after 12/31/2018, tax-free distributions can be used to pay for fees, books, supplies, and equipment required for the designated beneficiary's participation in an apprenticeship program. In addition, tax-free distributions (up to $10,000) are allowed to pay the principal or interest on a qualified education loan of the designated beneficiary, or a sibling of the designated beneficiary.

- **Kiddie tax TCJA changes are repealed**. Prior to 2018, the net unearned income of a child was taxed at the parents' tax rates if the parents' tax rates were higher than the tax rates of the child (known as the "kiddie tax"). In 2017, the Tax Cuts and Jobs Act (TCJA) changed the kiddie tax rate to the brackets applicable to trusts and estates. The new rules in the SECURE Act repeal the kiddie tax changes that were added by the TCJA. Starting in 2020 (with the option to start retroactively in 2018 and/or 2019), the unearned income of children is taxed under the pre-TCJA rules, and not at trust/estate rates.

- **Penalty-free retirement plan withdrawals for expenses related to the birth or adoption of a child**. Starting in 2020, plan distributions (up to $5,000) that are used to pay for expenses related to the birth or adoption of a child are penalty-free. 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.

- **Taxable non-tuition fellowship and stipend payments are treated as compensation for IRA purposes**. Before 2020, stipends and non-tuition fellowship payments received by graduate and postdoctoral students were not treated as compensation for IRA contribution purposes, and so could not be used as the basis for making IRA contributions. Starting in 2020, the new rules permit taxable non-tuition fellowship and stipend payments to be treated as compensation for IRA contribution purposes. This change will allow these students to begin saving for retirement earlier.

- **Tax-exempt difficulty-of-care payments are treated as compensation for determining retirement contribution limits**. Many home healthcare workers do not have taxable income because their only compensation comes from "difficulty-of-care" payments that are exempt from taxation. As such, they were not able to save for retirement in a qualified retirement plan or IRA. Starting in 2020 for contributions made to IRAs (and retroactively starting in 2016 for contributions made to certain qualified retirement plans), the new rules allow home healthcare workers to contribute to a retirement plan or IRA by providing that tax-exempt difficulty-of-care payments are treated as compensation for purposes of calculating the contribution limits to certain qualified plans and IRAs.

- **Other changes made by the SECURE ACT:**

- Long-term part-time employees who work at least 500 hours in at least 3 consecutive years are eligible to participate in an employer's 401(k) plan.
- The cap for the automatic enrollment safe harbor automatic escalation after the first plan year was increased from 10% to 15% of employee pay.
- Qualified employer loans made through the use of a credit card or similar arrangement under a qualified plan are treated as deemed distributions.
- Increased penalties for employers failing to file taxpayer and employee benefit plan returns (Form 5500).
- Employers may adopt employer-funded retirement plans to the due date of the employer's tax return.
- Tax credit available for small businesses that establish a retirement plan.
- Reinstated the exclusions for qualified state or local tax benefits and qualified reimbursement payments provided to members of qualified volunteer emergency response organizations and increased the exclusion for qualified reimbursement payments to $50 for each month during which a volunteer performs services.

For more information for how the SECURE Act may impact your retirement plan or estate plan, contact Stephanie Vogel or Matthew Whitehorn.