Patterson Belknap Webb & Tyler LLP

Employee Benefits and Executive Compensation Alert December 2019

Sweeping Changes to Retirement Plan Rules Passed Under the SECURE Act – Provisions Requiring Immediate Attention

On December 20, 2019, the Further Consolidated Appropriations Act, 2020 (the "FCAA") was signed by the President after passing both houses of Congress. Within the FCAA, which was primarily a budget and spending law, a version of the Setting Every Community Up For Retirement Enhancement Act of 2019 (which was first passed by the House of Representatives in May 2019) was included and became law (this portion of the FCAA is referred to as the "SECURE Act" or the "new law").

The SECURE Act makes broad and sweeping changes to the retirement plan landscape and contains numerous new requirements and new optional planning and design opportunities, some of which are effective immediately upon passage or apply to plan years (or tax years) beginning after December 31, 2019. A more detailed discussion of the provisions of the SECURE Act is beyond the scope of this alert, but will be forthcoming in the new year. Instead, this alert will focus on certain changes in the new law that are *required* to be operationally implemented by employers who sponsor and maintain qualified retirement plans and 403(b) plans either immediately or shortly after the passage of the SECURE Act.

New Requirements Immediately Impacting Retirement Plans

"Credit Card Loans" Prohibited

Where permitted, loans taken by employees from their employer sponsored retirement plan accounts are subject to aggregate dollar limits but, unless limitations are otherwise imposed for the plan, are not subject to specific limitations on the number of loans or the minimum size of each loan. As a result, retirement plans have not been prohibited from making multiple small plan loans to participants, including through credit card-type arrangements.

Effective immediately after the date the new law was enacted, the new law prohibits the making of new plan loans through any credit card or similar arrangement. The new law does not appear to impact any credit card plan loans made on or prior to December 20, 2019, and it would appear that repayment of those loans should continue in accordance with their terms.

Increase in Age for Required Minimum Distributions from 70½ to 72

Under prior law, required minimum distributions ("RMDs") under employer sponsored retirement plans, including qualified retirement plans and 403(b) plans (as well as 457(b) plans), generally must commence by April 1 of the calendar year following the later of the calendar year in which an employee attains age 70½ or the calendar year in which the employee retires (referred to as the "required beginning date").[1] Amounts that are required to be distributed as RMDs from qualified retirement plans and 403(b) plans (including amounts calculated with respect to the later of the year the employee attained age 70½ or retired[2] - even though not required to be paid until April 1 of the following year), are not eligible for rollover to an IRA or other employer plan.

[1] For 5% owners, the required beginning date is April 1 of the calendar year after the employee attains age 70½, even if still working.

[2] For 5% owners, the year the employee attained age 70½.

Under the new law, the age 70½ threshold in the required beginning date rules is changed to age 72, effective with respect to individuals who attain age 70½ after December 31, 2019. If an individual attained age 70½ in 2019 or any earlier year, and if they had terminated employment or are a 5% owner, RMDs must still begin by April 1 of the following calendar year (and continue annually thereafter) in accordance with the requirements under the prior law, and such RMDs remain ineligible for rollover. But the rules have changed for those who attain age 70½ after December 31, 2019.

Similar changes apply to traditional IRAs (where the required beginning date has been April 1 of the calendar year after attaining age 70½ (without regard to employment status)). That age is also changing to age 72.

One immediate consequence of this change is that individuals who have not attained 70½ by the end of 2019 may now have additional opportunities to roll over their entire account balances under an employer sponsored retirement plan or an IRA if they receive an otherwise eligible distribution in 2020 (and, to the extent applicable, in future years as well).

Plan Administrators (and, as applicable, sponsoring employers) will need to update the disclosures and explanations contained in the Rollover Notices that are required to be provided to employees or former employees who take a distribution that is eligible for rollover, in order to reflect the changes to the required beginning date in the SECURE Act.

New RMD rules for Designated Beneficiaries under Defined Contribution Plans

Under prior law, after the death of a plan participant, if payments began within one year of death, a plan could provide for benefit payments to a designated beneficiary over the lifetime or the life expectancy of the beneficiary. If death benefits to a non-spousal beneficiary did not begin within one year of the participant's death, they had to be paid in full within five years of that death.[3]

Under the new law, generally in the case of the death of a participant that occurs after December 2019,[4] a designated beneficiary under a qualified defined contribution plan or 403(b) plan must now be paid all distributions of the remaining benefits due under the applicable retirement plan within 10 years after the death of the employee, except that a limited exception will allow the designated beneficiary to receive distributions payable by the applicable retirement plan over their lifetime (or a period not exceeding their life expectancy) if *both* of the following requirements are met:

- the designated beneficiary is an "eligible designated beneficiary" (which includes the participant's surviving spouse, a child who has not reached the age of majority,[5] a disabled individual (as specifically defined), a chronically ill individual (as specifically defined), and any other individual who is not more than 10 years younger than the deceased participant); *and*
- the distributions begin within one year after the death of the participant (except that if the eligible designated beneficiary is the surviving spouse, then the distributions are not required to begin before the deceased participant would have attained age 72).

[3] We note that this is a generalization of the RMD rules under prior law, and that the actual rules that apply after the death of the employee are more complex and nuanced.
[4] The new law applies after later dates of death for certain collectively bargained and governmental plans.
[5] But for an eligible designated beneficiary that is a minor child, once the child reaches the age of majority, distributions of remaining plan benefits must be taken within 10 years of that date.

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In addition, following the death of any eligible designated beneficiary, the remaining amount (that would have otherwise been paid to the eligible designated beneficiary had he or she lived), if any, that is payable under the plan, must be paid within 10 years after the date of that death. The new rules around these so-called "stretch RMD" provisions contain additional nuances and exceptions (such as, without limitation, in the case of certain trusts for disabled or chronically ill beneficiaries and certain existing and binding commercial annuity contracts). Similar rules will apply to IRAs.

It is anticipated that plans may not be required to permit all delayed payments that could be permitted under the law; the new law establishes the outer limits of what is permissible with respect to participants who die after December 31, 2019 (with later dates for certain collectively bargained and governmental plans). Please note that these new rules may impact death benefits payable to the beneficiaries of a participant who has already begun to receive payments from a defined contribution retirement plan and who dies after 2019, and the available forms of benefit that include survivor benefit features (including annuity forms and certain installment forms) that will be able to be offered to participants under a defined contribution retirement plan. We are hopeful that governmental guidance will clarify certain questions regarding these new rules.

Next Steps for Employers

The SECURE Act contains numerous other changes, some of which are mandatory while others are optional. This alert summarizes certain of the required changes that are expected to immediately impact the administration of employer sponsored retirement plans, and employers and Plan Administrators should operationally conform to these new requirements at this time. Under the SECURE Act, conforming plan amendments (retroactive to the first day as of which the new rules apply) will not be required to be adopted any earlier than the last day of the first plan year beginning in 2022 (and later for certain collectively bargained and governmental plans). As noted above, situations are likely to arise for which the statutory text of the new law will not have clarity and will require additional guidance from the IRS.

The Firm anticipates publishing one or more additional alerts during 2020 discussing other noteworthy provisions of the SECURE Act.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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