

# RETIREMENT PLANS AND THE SECURE ACT:

## WHAT EMPLOYERS NEED TO KNOW





**By Joseph Topp,  
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**T**he SECURE Act (Setting Every Community Up for Retirement Enhancement), signed into law on Dec. 20, 2019, makes it easier for employers to offer a retirement benefit, improves plan design and operation and affords participants more options and flexibility. While the SECURE Act contains over 30 provisions,

employers should focus on specific provisions that affect group benefit plans or enhance current offerings. The act’s provisions have various effective dates, some immediate and others delayed to as late as 2022.

### Expanding access of employer-sponsored plans

The act has several provisions intended to encourage organizations to implement a participant-directed retirement plan benefit for their employees and expand eligibility to participate. We detail four of these major provisions here.

#### **Pooled Employer Plans (Open Multiple Employer Plans) – effective for plan years after Dec. 31, 2020**

This provision expands the existing Multiple Employer Plan provisions in an effort to simplify small employers collaborating in the formation of a single plan. Two or more unrelated employers may join together and offer their employees the benefits of participation in an employer-sponsored retirement benefit. When considering this provision, it’s important to understand the following:

- *Multiple Employer Plans (MEPs)* can exist two ways – under current regulatory guidance or via a *Pooled Employer Plan (PEP)*.
- A PEP covers two or more unrelated employers that do not meet the regulatory commonality requirements of a traditional MEP and is sponsored by a *Pooled Plan Provider (PPP)*.
- The PPP must include a named fiduciary, the plan administrator and the party responsible for all administrative duties.
- The act eliminates the “one bad apple” rule, which hindered the attractiveness for multiple employers to band together in offering a retirement plan.

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#### **Increased tax credits for small employer start-up plans – effective tax years after 2019**

This provision increases the tax credits for start-up expenses paid in the establishment or administration of a new plan, including 401(k), 403(b), SIMPLE IRA and SEP-IRA. The following points summarize the changes:

- Credits increase to the greater of 1) \$500 or 2) the lesser of \$250 times the number of employees eligible for participation, capped at \$5,000.
- Solo plans are not eligible for the credit.
- An additional \$500 credit applies to plans with an automatic enrollment feature.
- Credits apply for up to three years.
- A *small employer* is defined as one with no more than 100 eligible employees (excluding highly compensated employees) who received at least \$5,000 in compensation in the preceding tax year.

#### **Long-term part-time employees – effective plan years after Dec. 31, 2020**

This provision requires employers to allow part-time employees to make deferrals into their employer’s plan if they work at least 500 hours per year for three consecutive years, beginning January 2021. For employers, it’s important to note the following:

- These employees can be disregarded for testing and top-heavy purposes.
- These employees can be excluded from matching dollars and nonelective contributions from the employer.
- This rule does not apply to collectively bargained plans.

### Consolidated 5500 reporting – effective plan years after Dec. 31, 2021

This directs the IRS and the U.S. Department of Labor to effectuate the filing of a consolidated Form 5500 for similar plans. For plans to be eligible for consolidated filing, they must be defined-contribution plans with the same trustee, the same fiduciary (or named fiduciaries) under ERISA and the same administrator. Additionally, plans must use identical plan years and investment options offered to participants and beneficiaries.

### Revenue-generating provisions

It seems that no sweeping reform could pass without some impact on revenue collection. The act provides for the following increases in penalties for untimely filing:

- **Form 5500:** The IRS penalty for late filing increased from \$25 per day and a maximum fine of \$15,000 to \$250 per day and a maximum fine of \$150,000.
- **Form 8955-SSA:** The IRS penalty for failure to file increased from \$1 per day and a maximum fine of \$1,000 to \$10 per participant per day to a maximum fine of \$50,000.

### Lifetime income investment options

The act will likely lead to increased utilization of income annuity products in qualified plans, as there is added protection for plan fiduciaries and increased portability for participants.

### Safe harbor for the selection of a guaranteed retirement income annuity provider – effective immediately

Effective immediately, this provision provides safe harbor protections for plan sponsors in the selection and monitoring of a guaranteed income annuity product offered as an investment alternative in their defined-contribution plan. The safe harbor would protect plan fiduciaries from liability for any losses that may result to the participant due to an insurer's inability to satisfy its financial obligations under the terms of the contract.

The following safe harbor protections are now allowed in the selection of a lifetime income provider:

- Defined-contribution plan fiduciaries may rely on written representations from insurers regarding their status under state insurance law for purposes of considering the insurers' financial capabilities.



- A fiduciary is not required to select the lowest-cost contract but may consider the value provided by other features and benefits and attributes of the insurer.
- Fiduciaries are not required to review the appropriateness of a selection after the purchase of a contract for a participant or beneficiary.
- In general, fiduciaries would be deemed to have conducted a periodic review if the fiduciary obtains certain written representations from the insurer on an annual basis.

While the provisions outlined here are especially relevant to employers, the SECURE Act is comprehensive legislation. We would encourage you to contact your plan recordkeeper as well as your plan advisor and legal and tax counsel to explore your options in implementing or amending your plan offering. Many provisions of the act require further guidance from regulators, which means you still have plenty of time to evaluate this comprehensive legislation and identify what works best for your organization.

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