INVESTING INSIGHTS

High Probability ADVISORS

THE BONADIO GROUP
CPAs, Consultants & More

The SECURE Act's Call to Action

JEFFREY S. COONS, PH.D., CHIEF RISK OFFICER—*HIGH PROBABILITY ADVISORS*
MARC VALERIO*, CPA, PARTNER—*THE BONADIO GROUP

JANUARY 2020

On the eve of an election year, Congress has found time to pass the SECURE Act to expand and enhance retirement savings in the U.S. The SECURE Act, which is far catchier than its formal name of The Setting Every Community Up For Retirement Enhancement Act of 2019, has tax and regulatory changes that may impact your retirement plan and your personal retirement planning. In particular, small business owners who are "would-be" plan sponsors may benefit from several steps taken in the legislation to lower the start-up costs and administrative burden of offering a defined contribution plan. For current plan sponsors, the SECURE Act provides "gives and gets," but with an overarching theme of fostering automatic enrollment of participants and lifetime income as a plan option. While some aspects of the SECURE Act may take a few months to finalize, it is worthwhile to reach out to your third-party administrator, accountant and financial advisor, as applicable, to determine how the various provisions may affect you.

The SECURE Act has several sections addressed specifically to ***individuals saving for retirement,*** from home healthcare providers to students, but the broadest changes impact ***Individual Retirement Account (IRA) rules.*** In particular, there are two changes that acknowledge the fact that people are living and working longer:

- For those who will not reach age 70½ before the end of 2019, the age of required minimum distributions has been pushed back to 72 years old.
- Also, the ability to continue to contribute to an IRA after age 70½ (previously prohibited) is now allowed.

While both of these changes enhance retirement planning flexibility, a section of the SECURE Act has taken away an important estate planning tool by severely restricting the ability to form a ***"stretch" IRA.***

- Currently, an IRA owner may designate younger heirs (e.g., grandchildren) as beneficiaries upon the owner's death, thereby allowing them to stretch out their required minimum distribution over their heirs' lifetimes.
- The rule changes will now require that young beneficiaries take distributions over a period of ten years except for certain specific circumstances (e.g., disabled or chronically-ill beneficiaries).

The elimination of the stretch provision also pertains to Roth IRAs, which had not previously required any annual distribution, such that account balances must now be depleted within 10 years of the original account owner's death. However, qualified distributions from Roth IRAs, inherited or not, remain tax free under current law. Despite the new distribution requirements, Roth conversions may still be worth considering as an estate planning tool. ***In total, it is important that you review your estate and financial plan to ensure that your current strategy continues to be optimal under the new rules.***

In addition, the SECURE Act expands the allowable uses of monies saved in ***529 Plans.*** Specifically, your 529 education savings account may now be allowed to cover costs associated with registered apprenticeships, homeschooling, and private elementary/secondary or religious schools. Also, up to $10,000 may be used for qualified student loan repayments. It is important to keep in mind that the SECURE Act is a federal law, but state law regarding 529 plans will affect you as well. As a result, you should check on the rules for your state before taking advantage of these new provisions.

The SECURE Act has several provisions written to lower the costs and administrative burden of ***small businesses setting up retirement plans:***

- First, the credit to help defray plan start-up costs has been set at up to $5,000 for up to three years.
- Also, a credit of up to $500 per year for up to three years has been provided to small businesses to cover start-up costs of SIMPLE IRA and 401(k) plans if those plans include auto enrollment features.

An administrative relief has been provided by the Act in that plans adopted before the due date for the tax return for a taxable year may be treated as having started at the last day of the taxable year. Likewise, the SECURE Act has reduced the administrative burden of ***multi-employer plans*** by allowing for joint filing of the 5500 Form as long as they are defined contribution plans with the same named fiduciaries, trustee, administrator, plan year and investment options. This change may help pave the way for an increase in commercially-sponsored multi-employer plans providing standardized, turnkey retirement plans to small businesses.

There are several provisions of the SECURE Act that impact ***plan sponsors of existing defined contribution plans.*** First, the bad news. Late 5500 Form filings, notifications of change and withholding notices are among the mistakes that will face higher penalties, including up to ten-fold increases in maximum penalties. As an example, the penalty for providing the required tax withholding notice was raised from $10 per failure for a maximum of $5,000 to $100 per failure for a maximum of $50,000. ***Now more than ever, it is important to be working with administrators, auditors and tax advisers who can help you avoid the mounting fines facing those who fail to provide accurate and timely plan filings and notifications***.

An important theme of the SECURE Act is continued effort on the part of lawmakers and regulators to foster the use of ***auto enrollment and employee deferral escalation*** in retirement plans. Behavioral studies have shown that inertia is a powerful force in participant retirement decisions, so those who are automatically enrolled in a retirement plan and put on a path of escalating deferrals will tend to stay with that program. In line with this, one provision of the SECURE Act raises the cap on auto escalation of employee deferrals from 10% to 15% of employee compensation, while another eliminates the safe harbor notification requirements.

Another initiative reflected in the legislation is fostering ***lifetime income options*** for the investment menus of retirement plans. Those provisions related to lifetime income include a safe harbor for selecting a lifetime income provider and portability of lifetime income contracts through transfers to another retirement plan or an IRA. Further, benefits statements will be required to show the monthly payments a participant would receive if his or her current balance was used to provide a lifetime income stream. These provisions are likely to result in a significant increase in product development and sales activity by annuity providers, who have achieved limited success in placing their lifetime income products in retirement plans to-date.

Finally, there are several other provisions that may require a change in either your retirement plan vendor's offerings or your plan document. An example of the latter is a new rule requiring that your plan incorporate ***dual eligibility for part-time employees*** with three consecutive years of at least 500 hours of service. Likewise, ***penalty-free withdrawals*** will now be allowed to help employees cover the expenses of a birth or adoption. An example of a change that may affect your vendor's offerings includes the prohibition of loan administration through credit card like structures. ***Once again, there are enough detailed provisions like these in the SECURE Act to warrant a full review of your plan document, administrative procedures and vendor's services to ensure that your plan can fully comply with the new rules.***

We are here to help! Please let us know if we may assist and advise you through your efforts to work through these changes with your plan providers.

HIGH PROBABILITY ADVISORS

Call **(585) 485-0135** if we can address your questions or provide you further insight into our investing strategies.

167 Sully's Trail, Suite 300, Pittsford, NY 14534 | www.highprobabilityadvisors.com