SECURE Act Signals Legislative Leap Forward for Retirement

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In Brief

On Thursday May 23rd, the House of Representatives took a major step forward in ensuring workers' retirement security by passing the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019. SECURE is the most significant retirement bill to be enacted since the passage of the Pension Protection Act of 2006. As long-time advocates of legislation pushing retirement system enhancements, State Street has been following the SECURE Act closely and has distilled the comprehensive bill into four key themes:

- Increasing access to employer-sponsored workplace savings plans
- Upping employee saving activities in those plans
- Expanding employee spending options (e.g., lifetime income)
- Boosting workers' financial literacy regarding both retirement savings and spending choices

In an overwhelming bi-partisan vote, the House has made legislative strides with the passage of the SECURE Act of 2019. A selection of nine major provisions contained in the legislation follows:

Increasing Access

1. Authorizing Open MEPs and Repealing the "One Bad Apple" Rule

This provision allows completely unrelated employers to participate in a multiple employer plan or "open MEP." In addition, the previous rule that penalized the entire MEP for the violation of qualification rules by a single employer has been removed, thus eliminating the "one bad apple rule." This provision is effective in 2021.

2. Establishing Long-term Part-time Worker Status

Under current law, employers generally may exclude certain part-time employees (i.e., employees who have not satisfied a requirement that they have 1,000 hours of service in a year) when providing a plan to their employees. Except in the case of collectively bargained plans, the bill would require employers maintaining a 401(k) plan to have a dual eligibility requirement under which an employee must complete either a one year of service requirement (with the 1,000-hour rule) or three consecutive years of service where the employee completes at least 500 hours of service.

In the case of employees who are eligible solely by reason of the three year, 500 hour rule, employers have fewer plan requirements, including:

- No requirement to provide matching or non-elective contributions, and
- The option to exclude these employees from testing under the nondiscrimination and coverage rules (including the 401(k) safe harbor rules), and from the application of the top-heavy rules.

3. Encouraging Small Employers to Adopt Plans and Auto Enrollment by Providing Tax Credits

Under current law, employers with up to 100 employees are entitled to an annual tax credit for three years equal to 50% of the costs of starting up and administering a retirement plan, up to a cap on the annual credit of $500.

The bill increases the $500 cap to the lesser of $5,000 or $250 multiplied by the number of non-highly compensated employees eligible to participate in the plan. For small employers that adopt automatic enrollment provisions, they would be eligible for an additional $500 credit for three years.

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Upping Savings

4. Propelling Savings by Increasing the Limit on Automatic Escalation from 10% to 15%

Under the current law nondiscrimination safe harbor for automatic enrollment and automatic escalation, a plan may not automatically enroll or escalate employees so that they make contributions that exceed 10% of pay. The proposal would maintain the 10% cap for the first year in which the employee is automatically enrolled, but would increase the limit to 15% after that first year.

Expanding Spending Options

There are two key provisions that encourage plan sponsors to adopt and use **lifetime income** provisions in their 401(k) plans:

5. Modifying the Fiduciary Safe Harbor for Selecting an Annuity Provider

For purposes of fulfilling their fiduciary duty to consider an annuity provider's financial capability to fulfill its obligations, Defined Contribution plan fiduciaries may rely on representations from insurers regarding their financial status under state insurance laws.

6. Enabling Portability of Lifetime Income Products

The bill facilitates portability of lifetime income products held in retirement plans, meaning employees can move these products as they transition to new jobs. Plan participants would be allowed to take a distribution of a "lifetime income investment" in cases where:

- The distribution is made via a direct rollover to another retirement plan or IRA, or through distribution of the lifetime income investment, and
- The lifetime income investment is no longer authorized to be held under the plan.

Additional spending options are also covered, including:

7. Offering Penalty-free Distributions Upon the Birth or Adoption of a Child

Upon birth or adoption of a child, a participant may withdraw up to $5,000 penalty-free from any type of Defined Contribution plan that permits these types of distributions or an IRA. Such distributions may also be repaid, in which case, the repayment would be treated like a rollover.

8. Increase in Age for Required Minimum Distributions from 70 ½ to 72

Under the bill, the age 70 ½ trigger for taking required minimum distributions would be raised to age 72, effective for distributions after 2019 with respect to individuals who turn 70 ½ after 2019. Under the effective date, if an individual turns 70 ½ in 2019, such individual will need to take a required minimum distribution for 2019 and 2020, even though he or she may not attain age 72 until 2021.

Boosting Financial Literacy

9. Featuring Lifetime Income Disclosure

The legislation requires that a lifetime income disclosure benefit statement be provided annually to Defined Contribution plan participants. This disclosure is intended to provide participants a projection of what they could expect to receive monthly during retirement as a function of their savings to-date. By translating the saving experience into a future income stream, participants can better assess their retirement readiness and make changes accordingly.

While projections can be perilous, given market volatility and the sometimes winding journey to retirement, income inputs come from DOL-prescribed assumptions and explanations, meaning employers and service providers will not bear the burden of liability should actual benefits be less than those reflected in the disclosures.

At the four-way intersection of access, saving, spending and education is an opportunity to powerfully and positively change the way participants and plans prepare for and experience retirement. We are excited by the progress this bill portends and will continue to champion policy that furthers these avenues and propels better retirement outcomes.

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