NAIFA Summary: The SECURE Act

Bill: H.R.1994, the "Setting Every Community Up for Retirement Enhancement Act of 2019"
Sponsor/Original Cosponsors: Rep. Richard Neal (D-MA), Rep. Kevin Brady (R-TX), Rep. Ron Kind (D-WI), Rep. Mike Kelly (R-PA)
Status: Enacted on December 20, 2019 as part of the Fiscal Year 2020 Appropriations Bill

THE ISSUE: With 10,000 people reaching retirement age every day for the next 15 years, it is important that public policy incentivizes and encourages families to save and plan for retirement. Most workers will take advantage of savings programs if offered by their employer. Small businesses especially can be incentivized and encouraged to offer retirement savings plans for their workers. Statistics show that if an employer sponsors a retirement plan, almost 70% of its employees will elect to participate.

BACKGROUND: Nearly 90 million Americans rely on a private sector plan such as a 401(k) defined contribution or defined benefit plan to save for retirement (1) and 42.5 million households own IRAs (2). 90 million American families rely on annuities or other life insurance products for long term financial security (3). Unfortunately, Baby Boomers and GenXers are projected to have a retirement income deficit of $4.3 trillion and roughly 44% will lack adequate retirement income for basic expenses (4).

Congress Enacts SECURE! Expands and enhances retirement security for American families
The "Setting Every Community Up for Retirement Enhancement Act of 2019" SECURE Act was enacted on December 20, 2019, with most of the provisions effective January 1, 2020. NAIFA advocated for this legislation as the first sweeping retirement enhancement legislation in decades.

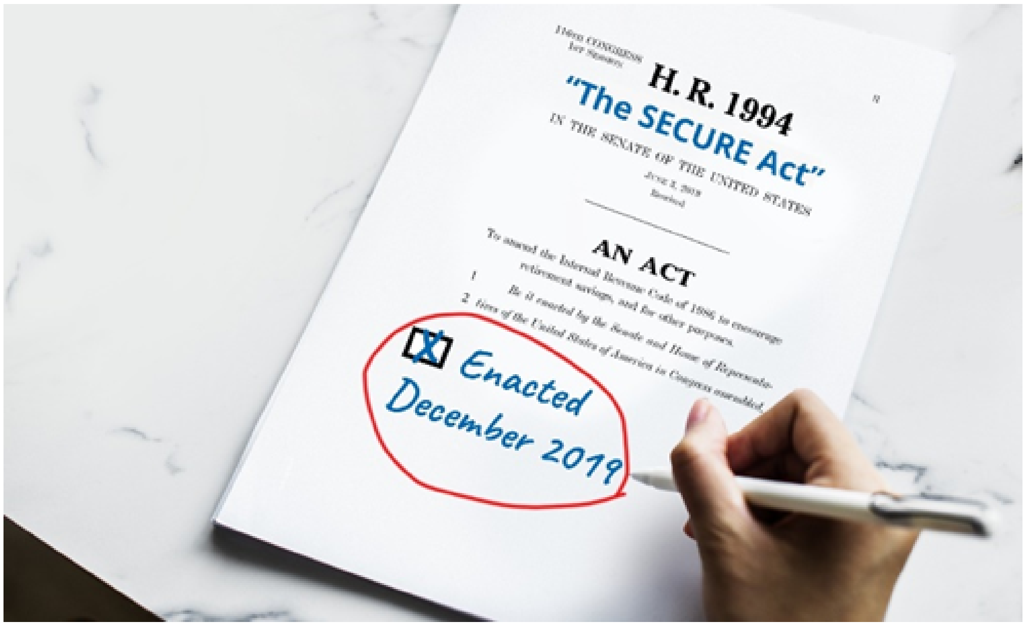
The SECURE Act will make an immediate difference to the overall retirement readiness of American families, by offering employer tax credits for starting new plans, expanding multiple employer plans so that even the smallest employers can offer retirement savings programs, making it easier to include annuities as an option for retirement plan allocations, providing consumers with clear statements

[1] U.S. Department of Labor Employee Benefits Security Administration, Private Pension Plan Bulletin, Abstract of 2014 Form 5500 Annual Report (September 2016).
[2] "ICI Research Perspective," Investment Company Institute (ICI), 2017, available at https://www.ici.org/pdf/per23-01.pdf
[3] American Council of Life Insurers, 2016 Life Insurer's Fact Book
[4] Employee Benefit Research Institute, EBRI Notes: Retirement Income Adequacy for Boomers and Gen-Xers: Evidence from the 2012 EBRI Retirement Security Projection Model.

that illustrate how much monthly income their savings might generate, and includes several fixes to preserve benefits for employees covered by defined benefit plans. Additionally, the SECURE Act provides the needed fix to inadvertent tax rules so that children of Gold Star families are not subject to triple the current tax on those survivor benefits.

Following is a brief summary of some of the provisions in the SECURE Act.

<u>Fixes and Enhancements</u>



- Open Multiple Employer plan (MEP) rules are modified to resolve hurdles small businesses faced when contemplating participation in a retirement benefits MEP. Under former rules, if one employer failed to meet its obligations to the plan and in accordance with ERISA rules, then the entire plan could be disqualified (one bad apple rule). This is modified so that the egregious employer is removed from the plan and the qualification remains for the rest of the plan and participating employers. Also, there was a requirement that the businesses have both a common business interest and a purpose in joining together other than to provide their employees' benefits, and that those employers also have certain plan responsibilities. These provisions too, are removed under the new rule. Now, if you have small business owners wanting to fund their retirement at maximum amounts and to offer benefits to their employees, they can adopt into a MEP and have a significant portion of the plan administrative duties taken care of as part of a single plan by the plan providers and record keepers.

- The Lifetime Income Disclosure Act (LIDA) is part of SECURE as well. Employers (and/or their third-party administrators/record keepers) are required to provide an illustration at least annually, that illustrates the amount of monthly income that could be derived from the account balance. The Department of Labor (DOL) is instructed to provide computation instructions including reasonable assumptions for these projections.

- There are modifications to certain defined benefit plans clarifying employees eligible for church sponsored entities and protections for employees of "frozen" defined benefit plans.

- IRA contributions will be permitted past age 70½ are permitted under the new rule.

- Required minimum distributions from IRAs to phase in to delay mandatory distributions from age 70½ to age 72.

- Long-term part time workers (3 years of service with at least 500 hours per year) will be eligible to participate in employer-sponsored retirement plans.

- A rule change allows for a trustee-to-trustee transfer, an in-kind distribution of the annuity, making it more prudent for a plan participant to select an annuity to ensure a guaranteed lifetime income, and not be subject to surrender charges if the asset needs to be transferred to another plan.

Safe Harbors

- Simplification of the 401(k) safe harbor discrimination rules.

- A new safe harbor provides that employers can rely upon state regulators when meeting their obligations to select a financially viable insurance provider when including annuities in a plan's investment options.

Tax Credits

- An increase in the tax credit for small employer plan start-up costs (to the greater of (1) $500 or (2) the lesser of $250 multiplied by the number of non-highly compensation employees (NHCEs) or $5,000—the credit would be available for three years.

- A new $500 tax credit for start-up costs for automatic enrollment 401(k) or SIMPLE plans—this is in addition to the current law tax credit and would be available for three years.

Non-Retirement Provisions

- The legislation expands 529 education savings accounts to cover costs associated with registered apprenticeships; homeschooling; up to $10,000 of qualified student loan repayments (including those for siblings); and private elementary, secondary, or religious schools.

- The Tax Cuts and Jobs Act created inadvertent changes to how Gold Star family children's assets are taxed, who formerly were obligated to pay 12% to 15% in taxes on such income saw but their tax rate jump to 37%. The SECURE Act repeals the portions of the tax law that have been problematic to Gold Star Families. This results in taxing the income at the child's parent's tax rate, rather than at the rate for trusts and estates, thereby significantly reducing the family's tax burden.

Revenue Offsets

- A “stretch IRA” rule—applicable to inherited IRAs and 401(k) account balances—that will accelerate tax liability for many heirs. Under this new rule, many heirs to IRAs and 401(k) accounts will have to pay income tax on these monies within 10 years of the date of the decedent’s death, but not on a pro rata annual basis. Exceptions include surviving spouses, minor children, heirs who are disabled or chronically ill, and heirs who are within 10 years of the age of the decedent. There is also a clarifying rule for trusts for the benefit of disabled/chronically ill heirs. This rule was included in the SECURE Act as an offsetting revenue raiser that was largely responsible for the SECURE Act not adding to the federal deficit. That seemed to be something lawmakers required in order to support the bill. While NAIFA did not support these changes, we were instrumental in getting the “ten-year” window, allowing NAIFA members ample time to help their clients transition to the new rule. Effective for deaths occurring after 12/31/2019.

- Other revenue offsets come from increases in penalties for certain plan filing delays/errors.

More Resources:

- Section by Section – SECURE Act
- Section by Section – Year-End Spending Bill (H.R. 1865)
- Final Bill
- NAIFA Press Release

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