



# The SECURE Act Is Here. Now What?

New retirement legislation impacts retirement plans and savers.

January 2020

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## KEY POINTS

- Bipartisan retirement legislation was signed into law on December 20, 2019, and will bring changes to retirement plan sponsors and individual retirement savers.
- Some provisions became effective as of January 1, 2020, and may merit immediate plan sponsor attention.

On December 20, 2019, the Further Consolidated Appropriations Act (FCAA) was signed into law. It included the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), along with a handful of other retirement measures previously passed in the House.

The legislation closely resembles the original SECURE Act passed by the House on May 23, 2019, with a few changes and new provisions, including:

- A transition period for employers to amend their plans pursuant to the new law. For private non-collectively bargained plans, the plan amendment deadline is the end of the 2022 year. Governmental and collectively bargained plans get an extra two years to make amendments.
- In-service withdrawals from governmental 457(b), defined benefit, and money purchase pension plans beginning at age 59½.

- A provision offering disaster relief comparable to what was offered to victims of certain other federally declared disasters, including most recently the 2017 California wildfires, for a limited time period.

## Changes for private employer retirement plans

The legislation includes some provisions that may have a lasting impact on the structure of private employer retirement plans.

For example, the law includes provisions likely to encourage the addition of annuities or other guaranteed lifetime income investments to defined contribution plans and introduces a new form of multiple employer plans for unrelated employers called Pooled Employer Plans (PEPs).

PEPs are sponsored by firms (known as “pooled plan providers”) that accept fiduciary responsibility and undertake tasks of plan administration.

These provisions have the potential over time to change the common structures of retirement plans. Also important are provisions helping to save from extinction defined benefit plans that are closed to new entrants but continue to accrue benefits for those still covered.

### **Improving retirement savings**

Other provisions in the legislation have the potential to improve retirement savings more immediately. Small changes like a delay in required minimum distributions (RMDs) and improved coverage for long-term, part-time employees can help improve the financial security of many individuals.

Particularly encouraging in the legislation is a provision that endorses a retirement savings rate of 15%. Although the provision is narrowly focused on plans offering a qualified automatic contribution arrangement (QACA), the congressional imprimatur on a retirement savings rate as high as 15% reinforces a message that T. Rowe Price has long delivered about how individuals can improve their chances for achieving financial security in retirement.

### **Timing of the provisions**

The government spending legislation does not alter any of the effective dates in SECURE as originally passed in the House on May 23, 2019. As a result, many of the provisions become effective almost immediately, without an opportunity for regulatory guidance or relief.

T. Rowe Price will participate with industry trade groups in seeking clarification as to how to adapt in the short-run to these immediate changes.

### **Provisions with the potential to increase long-term retirement savings**

#### **Safe harbor plans**

Effective for plan years beginning after December 31, 2019:

- Raises the cap on auto-enrollment and auto-escalation in a QACA plan from 10% to 15% (although in the first year, the default contribution rate cannot exceed 10%).

#### **IRA contributions**

Effective for taxable years beginning after December 31, 2019:

- Provides that compensation on which IRA contributions may be based will include non-tuition fellowship and stipend payments related to graduate or postdoctoral study.
- Repeals the prohibition on making non-rollover contributions to a traditional IRA after age 70½.
- Reduces the exclusion for qualified charitable distributions after age 70½.

#### **Difficulty of care payments**

Effective for IRAs for contributions made after enactment. For retirement plans, it is effective for plan years beginning after December 31, 2015:

- Allows difficulty of care payments to foster parents to be considered compensation for purposes of contributions to IRAs or defined contribution plans.

### **Provisions with the potential to increase the number of individuals covered by retirement plans**

#### **Open multiple employer plans (MEPs) and PEPs**

Effective for plan years beginning after December 31, 2020:

- Allows unrelated employers to participate in MEPs—which would be called “pooled employer plans” (PEPs).
- Requires PEPs to use a “pooled plan provider” (PPP) who is responsible for performing all administrative duties necessary to ensure compliance with ERISA and the Code.

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There are more immediate, mandatory provisions requiring attention, including the change in the required beginning date for RMDs, and the elimination of the so-called “stretch-IRA” rules.

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Plan sponsors should consider if adopting other changes, such as new birth/adoption distributions and in-service withdrawals at age 59½ for some plan types, aligns with their retirement benefit philosophy.

- Requires that each participating employer retains fiduciary responsibility for selection and monitoring of the PPP, and (unless delegated to another fiduciary) plan investments.
- Allows for “One Bad Apple Relief,” which requires that assets attributable to a “bad apple” employer be spun off from the MEP or PEP to a separate plan or IRA and the employer would assume related liabilities.

#### **Coverage of long-term part-time employees**

Effective for plan years beginning after December 31, 2020:

- Provides that 401(k) plans, except for collectively bargained plans, may not have an eligibility “service” requirement beyond the earlier of: (a) one year of service (1,000 hours); or (b) three consecutive years of service where the employee completes at least 500 hours of service in each year.
- Allows an employer to elect to exclude employees becoming eligible following three consecutive years of service from nondiscrimination, coverage, and top-heavy rules. Also, the employer is not required to make matching or nonelective contributions on behalf of such employees.

#### **Credits for small employer plans**

Effective for taxable years beginning after December 31, 2019:

- Increases the annual cap on the three-year startup credit for new plans of small employers from \$500 to as high as \$5,000.
- Creates a new credit of \$500 per year for up to three years for small employers (generally up to 100 employees) adding an eligible automatic contribution arrangement.

#### **Provisions with potential to decrease leakage**

##### **RMD beginning age increase to 72**

Effective for individuals turning 70½ after December 31, 2019:

- Changes the required beginning date for RMDs from April 1 of the calendar year following the calendar year in which the individual reaches age 70½ to April 1 of the calendar year following the calendar year in which the individual reaches age 72. The exception for plan participants who are still employed continues to apply.

#### **Provisions increasing access to retirement savings (potential to increase leakage)**

##### **Penalty-free birth/adoption withdrawals**

Effective for distributions made after December 31, 2019:

- Permits “qualified birth or adoption distributions” from IRAs and as an option for retirement plans. Such distributions are (a) exempt from the 10% early distribution penalty, and (b) in the case of retirement plans, exempt from mandatory 20% withholding and 402(f) notice requirements.
- Requires that these distributions must be taken within one year of birth or adoption and are limited to \$5,000 per birth or adoption (per spouse). Does not include the adoption of a child of the spouse.
- Allows these distributions to be repaid to the plan from which the withdrawal was taken or to an IRA without regard to the 60-day limit for rollovers.

##### **In-service distributions from governmental 457(b) and pension plans**

Effective for plan years beginning after December 31, 2019:

- Allows in-service distributions beginning at age 59½ from defined

benefit plans, money purchase plans, and governmental 457(b) plans.

### **Disaster relief**

Generally, the provision applies upon enactment to qualified disaster distributions beginning in 2018 and ending 180 days after enactment.

Note: Increased loan limits and extended loan repayment periods have different effective dates.

- Permits “qualified disaster distributions” from retirement plans and IRAs of individuals whose principal place of abode was located in a qualified disaster area and who sustained an economic loss due to a qualified disaster.
- Exempts qualified disaster distributions from the 10% early distribution penalty and exempts them from mandatory 20% withholding on eligible rollover distributions.
- Includes qualified disaster distributions in income ratably over a three-year period. The distributions may be repaid within three years to any eligible retirement plan that accepts rollover contributions (or to an IRA).
- Permits recontributions of hardship distributions from retirement plans and qualified first-time homebuyer distributions from an IRA that were intended to be used to purchase or construct a principal residence in a qualified disaster area (but which was not purchased or constructed due to the disaster).
- Allows retirement plans to provide higher loan limits (lesser of \$100,000 or 100% of the participant’s vested account balance) to impacted participants. In addition, retirement plans can allow impacted participants to delay loan requirements for up to one year.

### **Provisions promoting lifetime income investments in defined contribution plans**

#### **Fiduciary safe harbor for annuity selection**

Effective on the date of enactment:

- Creates a statutory safe harbor for the selection of annuity providers that allows fiduciaries to rely on written representations from insurers regarding their status under state insurance law.

#### **Special portability for participants with lifetime income investments**

Effective for plan years beginning after December 31, 2019:

- Allows participants to directly roll over a lifetime income investment to an IRA or another retirement plan (without regard to normally applicable withdrawal restrictions) if the lifetime income investment is no longer authorized to be held under the plan.
- Allows that, in the case of an annuity contract, participants receive the contract through a direct distribution.

#### **Mandatory lifetime income disclosure**

Effective for benefit statements furnished more than 12 months after DOL’s issuance of necessary guidance:

- Requires annual lifetime income disclosures on benefit statements for ERISA-governed defined contribution plans, which would illustrate the amount of monthly payments the participant would receive if the participant’s account were used to purchase a qualified joint and survivor annuity and a single life annuity.
- DOL would be required to prescribe assumptions used in the illustrations and issue a model disclosure.

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Plan sponsors of QNEC safe harbor plans should consider taking advantage of the new flexibility in timing.

### **Provisions simplifying plan administration**

#### **Mid-year or later adoption of a safe harbor feature based on a qualified nonelective contribution (QNEC)**

Effective for plan years beginning after December 31, 2019:

- Eliminates safe harbor notice requirements for plans using nonelective safe harbor contributions.
- Permits a mid-year change to become a nonelective safe harbor plan at any time before the 30th day before the close of the plan year, or on or after the 30th day before the close of the plan year as long as the nonelective contribution is at least 4% (and a plan amendment is made by the close of the following plan year).

#### **Common Form 5500 for similarly serviced plans**

Applies to returns for plan years beginning after December 31, 2021:

- Allows for a group of plans to file a single Form 5500 if all plans: have the same trustee, named fiduciary(ies), and plan administrator; use the same plan year; and provide the same investment options.

#### **403(b) custodial account termination clarity**

Retroactively effective, following Treasury guidance, for taxable years beginning after December 31, 2008:

- Provides that to effectuate the termination of a 403(b) plan that includes investments held in custodial accounts, such accounts may be distributed in kind and maintain their tax deferred status until paid out.

### **Provisions supporting defined benefit (DB) plans**

#### **Closed DB plan relief**

Effective for distributions made after December 31, 2018:

- Allows closed defined benefit plans (subject to certain requirements) to be aggregated and tested on a benefits basis with one or more defined contribution plans, and provides nondiscrimination relief with respect to benefits, rights, and features.

### **Other provisions raising revenue**

#### **Limits on “stretch IRA”**

Effective for deaths after 2021 for governmental plans. For collectively bargained plans, the effective date is for deaths after the later of 2021 or the expiration of the current collectively bargained agreement. For all other plans and IRAs, it is effective for deaths after 2019:

- Requires a beneficiary of a defined contribution plan or IRA generally to draw down his or her entire account balance within ten years.
- Makes an exception for an “eligible designated beneficiary,” which includes a surviving spouse, a child under the age of majority, a disabled or chronically ill beneficiary, and a beneficiary who is not more than ten years younger than the participant or IRA owner. The ten-year rule would apply as of the date a minor child reaches the age of majority and upon the death of any eligible beneficiary.
- States that the exception for an “eligible designated beneficiary” only applies if distributions begin within one year of death and spans the beneficiary’s life expectancy.

#### **Increased penalties for filing and notice failures**

Effective for returns, statements, and notifications filed or provided after December 31, 2019:

- Increases the tax penalty for failure to file Form 5500 from \$25 to \$250 for each day following the failure, and the maximum penalty is increased from \$15,000 to \$150,000.

- Provides significant increases in penalties for failures relating to annual registration statements (identifying separated participants with deferred vested benefits), notification of certain changes in a plan's registration information, and withholding notices.

### **Non-retirement provisions**

#### **Expanded 529 plan uses**

Effective for distributions made after December 31, 2018:

- Expands the definition of qualified higher education expenses to include: (a) expenses for fees, books, supplies, and equipment required for the participation in certain apprenticeship programs, and (b) amounts paid as principal or interest on qualified education loans of the 529 plan beneficiary or the beneficiary's sibling (subject to a lifetime limit of \$10,000 per individual).

#### **Repeal of the "Cadillac Tax"**

- Repeals the controversial excise tax of 40% on employers offering health plans that exceeded standards set in the Affordable Care Act (the so-called "Cadillac Tax").

### **LOOKING FORWARD TO 2020 PROVISIONS AND BEYOND**

T. Rowe Price continues to monitor developments on the interpretation of SECURE and other retirement-related provisions of FCAA. In the meantime, we will work with our plan sponsor clients to implement mandatory provisions, such as the change in the beginning date for RMDs, and to assist clients in adopting optional provisions.

For questions about these retirement provisions, contact your T. Rowe Price representative.

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