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She is currently serving as Co-Chair of the NCACPA Employee Benefits Audit Conference Committee and previously served as president of the Triangle Benefits Forum.

Advising Your Clients About Changes Made by the Secure Act

Stancil CPAs • Advisors | presented by Diane Helms, CPA, CGMA

What is the SECURE Act?

- S – Setting
- E – Every
- C – Community
- U – Up for
- R – Retirement
- E - Enhancement

- Secure Act (H.R. Bill 1994)

- Signed into Law 12/20/2019

- Largest Retirement Planning Bill Since Pension Protection Act of 2006

MAIN TOPICS OF CONSIDERATON

- Changes Affecting IRAs
- Changes Affecting 401(k) Plans and Participants
- Changes Affecting 529 Plans
- Other Tax Law Changes

- Changes Affecting IRAs

IRA Considerations

1. RMD age raised from 70 ½ to 72
2. Repeal of maximum age restrictions for traditional IRA contributions
3. Qualified Charitable Distributions
4. Modifying the RMD terms for inherited IRAs
5. Grad Students and Care Providers compensation can now count for IRA or Retirement Plan savings purposes.

Changes Affecting IRAs

1. **RMD age is raised from 70 ½ to 72**

   - If you reach 70 ½ by the end of 2019 - your beginning RMD date is set and you follow the old rules.

   - If you do not reach 70 ½ by the end of 2019 - you begin taking RMDs at age 72.

2. **Repeals the maximum age restrictions for traditional IRA contributions:**

   - If you have earned income after age 70 1/2, you can now contribute to an IRA (either deductible or non-deductible).

Changes Affecting IRAs (continued)

Tax Rate	Taxable Income (Single)	Taxable Income (Married Filing Jointly)
10%	Up to $9,875	Up to $19,750
12%	$9,876 to $40,125	$19,751 to $80,250
22%	$40,126 to $85,525	$80,251 to $171,050
24%	$85,526 to $163,300	$171,051 to $326,600
32%	$163,301 to $207,350	$326,601 to $414,700
35%	$207,351 to $518,400	$414,701 to $622,050
37%	Over $518,400	Over $622,050

Changes Affecting IRAs (continued)

3. **Qualified Charitable Distributions.**

   – For those over age 70 ½ that exclude from income, IRA distributions paid directly to a charity (Qualified Charitable Contributions) –exclusions are now reduced by the amount of deductible IRA contributions made.

Changes Affecting IRAs (continued)

4. **Modifying the RMD terms for inherited IRAs.**

"Stretch IRAs" are eliminated over a lifetime of the beneficiary (aka beneficiaries of RMDs from an inherited IRA or a 401(k) Plan for a non-spouse) from the lifetime table down to 10 years.

a. The exception to the 10-year payout rule changes if the beneficiary is

- The spouse
- a minor
- disabled
- chronically ill as specifically defined
- if the individuals within 10 years of the age of the deceased.

Changes Affecting IRAs (continued)

4. **Modifying the RMD terms for inherited IRAs (continued)**

   b. The exception allows the beneficiary to receive the distribution over the life or life expectancy of the beneficiary except for the minor. When the minor reaches age 18, the balance must be distributed within 10 years (aka by the end of age 27).

   c. If the beneficiary is a spouse, the RMD begins for the spouse when the deceased would have reached 72 (70.5 under the old law).

   d. Effective for deaths after 12/31/19.

4. **Modifying the RMD terms for inherited IRAs (continued)**

<u>Example 1</u>

Anne dies in 2020 and leaves her IRA to her designated beneficiary Ben, her brother, who is 8 years younger than Anne. The balance may be distributed over Ben's life or life expectancy. If Ben dies before the inherited IRA is exhausted, the remaining balance must be paid within 10 years after Ben's death.

<u>Example 2</u>

Chad dies in 2020 and leaves his IRA to his designated beneficiary Dee, his sister who was born 12 years after Chad. Dee's inherited IRA must be paid out within 10 years after Chad's death.

Changes Affecting IRAs (continued)

4. **Modifying the RMD terms for inherited IRAs (continued)**

<u>Example 3</u>

Jack dies on November 30, 2019 and leaves his IRA to his nephew Frank, who is 30 years younger than Jack.

Because Jack died before 2020, Frank's inherited IRA can be paid out over Frank's life or life expectancy. If Frank dies after 2020 but before the IRA is exhausted, the account balance must be paid out within 10 years after Frank's death.

Changes Affecting IRAs (continued)

5. **Grad Students and Care Providers compensation can now count for IRA or Retirement Plan savings purposes.**

   - Compensation can now include taxable non-tuition fellowship, stipend or similar amounts for purposes of IRA contributions in pursuit of graduate or postdoctoral study beginning in 2020. Also, difficulty-of-care payments to foster care (home healthcare) providers will also be considered compensation.

Changes Affecting IRAs (continued)

6. **IRA distribution penalty removed to cover Disaster area costs.**

   - IRA distributions made to individuals who live in qualified disaster area and who suffered economic losses are not subject to the 10% early withdrawal penalty and may be rolled over tax-free into another IRA within three years from the date of the distribution.

   - IRA distributions made to a 1st time homebuyer who built a principal residence in a qualified disaster area may roll the money back into the IRA any time before June 15, 2020.

➢ Changes Affecting 401(k) Plans and Participants

401(k) Considerations

1. Requiring 401(k) Plans to cover long-term PT employees working more than 500 hours/year.
2. Raising the RMD up from age 70 ½ to age 72.
3. Modifying the RMD terms for Inherited Retirement Plans.
4. Penalty Free Distributions for Birth/Adoptions.
5. Fiduciary Safe Harbors for Satisfying the Prudent Man Requirement for Annuity Provider Options.
6. Disclosure of Estimated Lifetime Income Stream of the DC plan’s benefit statements.
7. Allowing portability of the Annuity in a Retirement Plan when the plan no longer offers the annuity in the plan.
8. Increasing the maximum auto-enrollment feature for safe-harbor ADP non-discrimination plans to 15%.
9. Small business tax credits available for retirement plans.

401(k) Considerations (continued)

10. Plans adopted before the filing date of the Plan Sponsor's tax return including extensions for the plan year may be treated as in effect at the close of the year.
11. Prohibiting the use of credit or debit card access to 401(k) funds.
12. Loosening the participant notice requirements.
13. Loosening Plan Amendments for non-elective safe-harbor 401(k) Plans.
14. Form 5500 Late Filing Penalties Increase.
15. Form 8955-SSA Late Filing Penalties Increase.
16. Allowing unrelated employers to create pooled employer plans.
17. Nondiscrimination rules modified to protect older, longer service participants in closed plans.
18. Clarification of Church-controlled organization's retirement income accounts.
19. Guidance on how to terminate a 403(b) Plan custodial account.

Changes Affecting 401(k) Plans and Participants

The Plan document is the considered the rule of law for 401(k) Plans. The Bill requires Plans to adopt the SECURE Act changes by 2022 as an interim amendment. They suggest first waiting until the IRS and DOL supply further guidance on the allowed changes.

1. **Requiring 401(k) Plans to cover long-term PT employees working more than 500 hours of service.** Starting 2021, if you work a minimum of 500 hours per year for three consecutive years, at the end of the third year, you can start saving into the company's 401k.

   a. Excludes Union part-timers.
   b. Eligibility clock begins 1/1/2021.
   c. Employer is not required to provide a matching, profit sharing or safe harbor contribution to these employees.
   d. This type of employee will be excluded from annual non-discrimination testing.

Changes Affecting 401(k) Plans and Participants (continued)

2. **Raises the RMD age from 70 ½ to 72.**
   a. If you reach 70 ½ by the end of 2019 - your beginning date is set, and you follow the old rules.
   b. If you do not reach 70 ½ by the end of 2019 - you begin taking RMDs at age 72.

3. **Modifying the RMD terms for inherited Retirement plans.**

   Stretch 401(k) beneficiaries are eliminated over a lifetime of the beneficiary (aka RMDs from an inherited for a non-spouse) from lifetime table down to 10 years.

3. **Modifying the RMD terms for inherited Retirement plans (continued).**

   a. The exception to the 10-year payout rule changes if the beneficiary is
      - the spouse
      - disabled
      - chronically ill (as specifically defined)
      - within 10 years of the age of the deceased

   b. The exception allows the beneficiary to receive the distribution over the life or life expectancy of the beneficiary except for the minor. When the minor reaches age 18, the balance must be distributed within 10 years.

   c. If the beneficiary is a spouse, the RMD kicks in for the spouse when the deceased would have reached 72 (70.5 under the old law).

   d. Effective for employee deaths after 12/31/19.

Changes Affecting 401(k) Plans and Participants (continued)

4. **Penalty Free Distributions for Birth/Adoptions.**

The 10% penalty is waived for withdrawals to help pay for the birth or adoption of a child for up to $5k from any qualified retirement plan.

a. If you are married and both spouses have a 401(k), both spouses can take out $5k penalty free.
b. For births or adoptions after 2019.
c. For adopted individuals who did not reach age 18 or are physically/mentally incapable of self-support.
d. Provided you can repay that money back to the plan within 60 days of the distribution.
e. Note: Adopting a spouse's child does not qualify.

5. **Fiduciary Safe Harbors for satisfying the Prudent Man requirement for Annuity Provider Options.**

   a. If the safe harbor is satisfied the Plan's fiduciaries are protected from the liability for any losses if the insurer is unable to satisfy its financial obligations under the contract.

   b. The safe harbor is to obtain written representations from the insurer that they are licensed to offer GICs and have properly satisfied state laws for seven years prior to the offering in the plan.

   c. Effective 12/20/19.

6. **Disclosure of Estimated Lifetime Income Stream of the DC plan's benefit statements.**

   a. Plans must include a lifetime income disclosure in the benefit statements once every 12 months.

   b. They are to show a participant's current account balance converted into an estimated pretend monthly annuity at retirement age.

   c. This is effective when the DOL releases their final rules, the model disclosure or prescribed assumptions to report. Likely to be effective 2022.

7. **Allowing portability of the Annuity in a Retirement plan when the Plan no longer offers the annuity in the plan.**

   Active participants are now permitted to do a trustee-to-trustee transfer of annuity contracts when the annuity option is no longer to be held as an investment option under the plan.

8. **Increasing the maximum auto-enrollment feature for safe-harbor ADP non-discrimination plans to 15%**

   a. The safe harbor plan with the auto enrollment feature sets the employee up to defer at a default rate equal to a percentage of their compensation that is at least 3% in the first year and then auto-escalates 1% each subsequent year until capped at 15%. The employee can opt-out or change their deferral rate if they choose.

   b. More companies would be eligible to choose this option in their plans.

   c. The escalation feature cap increased from 10% to 15% beginning in 2020.

Changes Affecting 401(k) Plans and Participants (continued)

9. **Small business tax credits available for retirement plans.**

   a. Max credit to small businesses with less than 100 employees for adopting a new 401k plan is now up to $5k. The credit equals 50% of the costs incurred to up to a maximum of $5k. The plan must cover at least one non-highly compensated employee.

   b. New $500 tax credit for start-up costs for 401(k) or SIMPLEs that add the eligible automatic contribution arrangement feature (EACA). The credit is allowed for each of the first three years the provision is in place.

   c. Credits are treated as general business credits.

   d. This is effective for tax years after 12/31/19.

Changes Affecting 401(k) Plans and Participants (continued)

10. **Plans adopted before the filing date of the Plan Sponsor's tax return including extensions for the plan year may be treated as in effect at the close of the year.**

    a. Allowed even if no contributions were received during the plan year.

    b. Effective for plans adopted after 2019.

11. **Prohibiting the use of credit or debit card access to 401(k) funds.**

    If you use the cards as a loan, the 401k loans will be treated as taking taxable distributions. This applies to loans made after 12/20/2019.

12. **Loosening the participant notice requirements.**

    The safe harbor notice requirement to employees has been removed for plans that use the safe harbor non-elective contribution.

    a. Notice is still required if the plan makes the safe harbor matching contribution.

    b. Effective beginning 2020.

13. **Loosening Plan Amendments for Non-Elective Safe-Harbor 401(k) Plans.**

    a. Existing safe harbor plans can now be amended to add the safe harbor non-elective contributions feature during the plan year instead of prior to the beginning of the plan year.

    b. This is most likely not allowed if there is a safe-harbor matching contribution.

    c. The amendment must be done before 30 days form the close of the plan year OR the last day for distributing excess contributions for the plan year (aka March 15th).

    d. Effective 2020.

14. Form 5500 Late Filing Penalties Increase

IRS penalty for late filing the Form 5500 increased to $250/day up to a max $150,000.

a. Effective 2020

15. Form 8955-SSA Late Filing Penalties Increase

IRS penalty for late filing the Form 8955-SSA increases to $10 per participant per day up to a maximum of $50,000.

a. Effective for returns due after 12/31/19.

16. **Allowing unrelated employers to create pooled employer plans.**

    In 2021, plans can combine annual reports for group of defined contribution plans provided the plans have the same trustee, named fiduciary and administrator, use the same plan year and provides the same investment options.

    a. The “one bad apple” (aka noncompliant employer) rule that previously disqualified the plan for all employers has been given relief.

17. Nondiscrimination rules modified to protect older, longer service participants in Closed Plans.

    a. The modification permits existing participants to accrued benefits in a closed plan by modifying the nondiscrimination rules.

    b. Effective 12/20/19 without regard for adoptions on, before or after this date. It can apply all the way back to 2014, if the sponsor elects to do so.

18. **Clarification of church-controlled organization's retirement income accounts.**

    a. 403(b) plans can cover:

    - Duly ordained, commissioned, or licensed ministers of a church regardless of their compensation
    - Employee of an organization that is exempt under Code Sec 501 (non-profit) and is controlled by or associated by a church or convention or association of churches.
    - An employee who is included in a church plan under certain circumstances after separation from the service of a church, convention or association of churches.
    - Effective tax year beginning before, on or after 12/20/19.

19. **Guidance on how to terminate a 403(b) Plan custodial account.**

The plan may distribute the individual custodial account in kind to a participant or beneficiary of the plan and the distributed custodial account must be maintained by the custodian on a tax-deferred basis like a fully-paid annuity contract until that time it is ready to be paid out.

a. The account is not considered a taxable distribution to the participant.

b. This can be retroactively applied all the way back to 2009.

➢ Changes Affecting 529 Plans

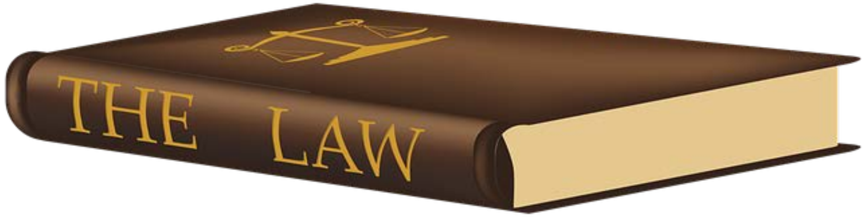
Changes Affecting 529 Plans

1. **Expand 529 plans to be used to cover vocational/apprenticeship training.**

2. **Expand 529 Plans to repay certain student loan debt.**

   Up to $10,000 of qualified education loan repayments can be considered qualified 529 account distributions.

➢ Other Tax Law Changes



Other Changes to Be Aware Of

1. Failure to file penalty
2. Casualty Losses
3. Changing Kiddie Tax Rules
4. Medical Deductions
5. Worker Opportunity Credit
6. Exclusion from income SALT benefits and qualified payments for volunteer emergency responders
7. Discharge of Indebtedness
8. Mortgage Insurance Premiums

Other Changes - Topics of Discussion

9. Qualified Tuition and Related Expenses Deduction
10. Penalty Free Distributions for Disaster Zones
11. Employer Tax Credits in Disaster Zones
12. Charity to Disaster Zones
13. Medical Device Tax
14. Health Insurer Fee
15. Cadillac Tax
16. IRS Operational Changes

Other Tax Law Changes

1. **Failure to File penalty.**

   Returns more than 60 days late have a penalty of the lesser of $400 or 100% of the amount of tax due.

2. **Casualty losses**

   Losses incurred during 2018 or 2019 in a “Qualified Disaster Area”, the deduction may be taken without exceeding the 10% gross income threshold that normally applies to casualty deductions. In addition, the deduction can be taken whether one itemizes their deductions or chooses the standard deduction. A flat $500 threshold applies in lieu of the 10% threshold.

3. **Changing Kiddie Tax Rates**

   Investment income of children can no longer be taxed at trust return rates and now is back to being taxed at their parents' tax rates.

   a. Kids under age 19 at the close of the tax year or is a full-time student under age 24, has more than $2k of unearned income, does not file a joint return and has one living parent.

   b. Effective for tax years after 2017, which means 2018 filings can amend their return if they benefit from applying the new rules to the 2018 return.

4. **Medical Deductions**

   The threshold to deduct medical expenses is back to 7.5% of adjusted gross income.

Other Tax Law Changes (continued)

5. **Worker Opportunity Tax Credit**
   a. Extended through 2020.
   b. These are tax credits for businesses hiring and retaining workers from certain groups like veterans, ex-felons etc.

6. **Exclusion from income SALT benefits and qualified payments for volunteer emergency responders reinstated for 2020.**
   a. The monthly exclusion limit is $50/month.

7. **Discharge of Indebtedness.**
   a. The disaster act extends the discharge of indebtedness for up to $2M limit for MFJ and or $1M for MFS to be excluded from gross income if discharged before 1/1/2021.

8. **Mortgage Insurance Premiums.**

The disaster act extends the deductibility of mortgage insurance premiums paid or accrued on qualified residence through 2020. The deduction is phased out by 10% for every $1000 the taxpayer's AGI exceeds $100,000 ($500 and $50,000 for MFS respectively). It is phased out if AGI exceeds $110,000 MFJ or $55,000 if MFS.

9. **Qualified Tuition and Related Expenses Deduction.**

The Act extends the deduction of qualified tuition and related expenses. The deduction is capped at $4,000 for individuals whose AGI does not exceed $65,000 ($130,000 for MFJ) OR $2,000 for individuals whose AGI does not exceed $80,000 ($160,000 for MFJ).

Other Tax Law Changes (continued)

10. **Penalty Free Distributions for Disaster Zones.**

    The Disaster Act provides an exception from the 10% early retirement plan withdrawal penalty for qualified disaster relief distributions not to exceed $100,000.

11. **Employer Tax Credits in Disaster Zones.**

    Employers affected by a qualified disaster in 2018 and 2019 will get a tax credit of 40% of wages paid (up to $6,000 per employee) for retaining employees after a disaster no matter if they perform services or not.

12. **Charity to Disaster Zones.**

    Charitable Contributions made during 2018 & 2019 for relief efforts in a qualified disaster zone are not subject to the normal 60% of income threshold.

13. **Medical Device Tax.**

    The Medical device excise tax was repealed for sales after 2019.

14. **Health Insurer Fee.**

    The health insurance provider's fee was repealed for the years beginning after 2020.

15. **Cadillac Tax.**

    The health insurance Cadillac tax was repealed for years beginning after 2019.

16. **IRS Operational Changes.**

    The Act prohibits the IRS from targeting any U.S. citizen for exercising their 1st amendment rights or based on their ideological beliefs. The IRS is also required to institute and enforce policies to safeguard confidentiality of taxpayer information and protect taxpayers from identity theft. IRS is also supposed to improve the IRS help line to decrease wait times.

Any final questions or comments?

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THANK YOU FOR ATTENDING