The SECURE Act passes in the House of Representatives - May 2019

The Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 has passed in the House making it one vote away from becoming law.

What is the SECURE Act?

The SECURE Act is a bill that, if signed into law, will be the biggest change to retirement plan law since the 2006 Pension Protection Act. While there are many legislations changes in this proposed bill, the overarching theme of the bill is providing retirement plans and their benefits to those who previously could not gain access. Such as, part time employees or small business owners who do not have the time or money to maintain a 401(k) Plan.

Key Takeaways:

- Open Multiple Employer Plans (MEP): Currently MEPs are only allowed to be utilized if the participating companies have some commonality, ie. Shared ownership or industry. This new bill proposes that any related or unrelated company can join a MEP provided it is run by a "pooled plan provider" aka the plan must have a named fiduciary who is responsible for keeping the plan in compliance.

- Simplification of Safe Harbor Rules: Safe Harbor Notification Requirement will be terminated, while still maintaining the requirement to allow employees to make or changes an election once per year. In addition, amendments to non-elective status are permitted any time before the 30th day before close of the plan year (ie. December 30th for calendar year plans).

- Increase in Age for Required Beginning Date for Mandatory Distributions: The bill increases the required minimum distribution age from 70 ½ to 72.

- Allowing Long-term Part-time Workers to Participate in 401(k) Plans: The bill will 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.

- Plans Adopted by Filing Due Date for Year May Be Treated as in Effect as of Close of Year: The legislation permits businesses to treat qualified retirement plans adopted before the due date (including extensions) of the tax return for the taxable year to treat the plan as having been adopted as of the last day of the taxable year. The additional time to establish a plan provides flexibility for employers that are considering adopting a plan and the opportunity.

- Penalty-free Withdrawals from Retirement Plans for Individuals in Case of Birth or Adoption: The legislation provides for penalty-free withdrawals from retirement plans for any "qualified birth or adoption distributions."

- Treatment of Custodial Accounts on Termination of Section 403(b) Plans: Under the provision, not later than six months after the date of enactment, Treasury will issue guidance under which if an employer terminates a 403(b) custodial account, the distribution needed to effectuate the plan termination may be the distribution of an individual custodial account in kind to a participant or beneficiary. The individual custodial account will be maintained on a tax-deferred basis as a 403(b) custodial account until paid out, subject to the 403(b) rules in effect at the time that the individual custodial account is distributed. The Treasury guidance shall be retroactively effective for taxable years beginning after December 31, 2008.

- Increase Credit Limitation for Small Employer Pension Plan Start-Up Costs: Increasing the credit for plan start- up costs will make it more affordable for small businesses to set up retirement plans. The legislation increases the credit by changing the calculation of the flat dollar amount limit on the credit to the greater of (1) $500 or

(2) the lesser of (a) $250 multiplied by the number of nonhighly compensated employees of the eligible employer who are eligible to participate in the plan or (b) $5,000. The credit applies for up to three years.

- Small Employer Automatic Enrollment Credit: The legislation creates a new tax credit of up to $500 per year to employers to defray startup costs for new section 401(k) plans and SIMPLE IRA plans that include automatic enrollment. This is in addition to the plan start up credit allowed under the current law for the first 3 years. The credit would also be available to employers that convert an existing plan to an automatic enrollment design.
- Increased Penalties for Failure to File Retirement Plan Returns: The legislation modifies the failure to file penalties for retirement plan returns.
    - The Form 5500 penalty would be modified to $105 per day, not to exceed $50,000.
    - Failure to file a registration statement would incur a penalty of $2 per participant per day, not to exceed $10,000.
    - Failure to file a required notification of change would result in a penalty of $2 per day, not to exceed $5,000 for any failure.
    - Failure to provide a required withholding notice results in a penalty of $100 for each failure, not to exceed $50,000 for all failures during any calendar year.

The Senate is set to vote on the SECURE act in the near future, if the bill passes it will land on President Trump's desk to be signed and be written into law. While this is currently only a bill Dunbar, Bender & Zapf is fully prepared to facilitate all plan changes that may occur in the future.