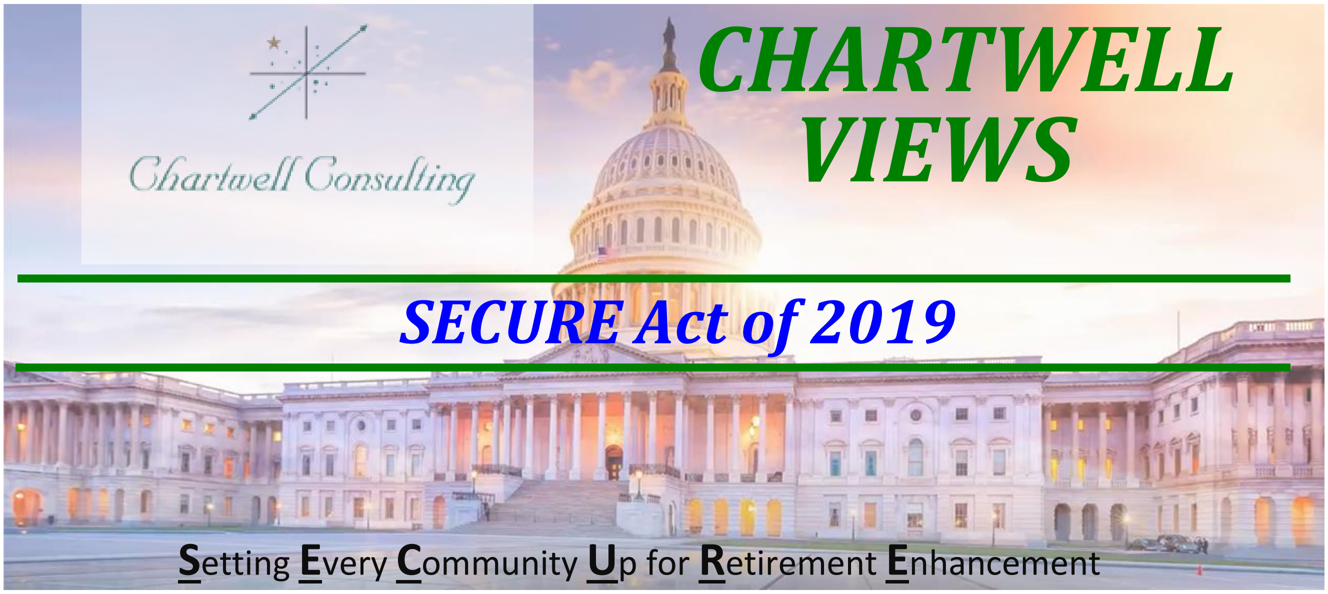

The SECURE Act was passed by the US Senate and signed into law by President Trump on December 19, 2019. It is the most significant piece of retirement legislation in more than a decade. The SECURE Act includes provisions that:

- encourage employers to adopt retirement plans for their employees and to expand access to existing plans;
- are designed to increase retirement readiness by closing the gap between what employees are and should be saving for retirement;
- help employees understand the amount of money needed to retire;
- will impact retirement plan administration;
- will affect health and welfare plans.

The following summarizes the most significant SECURE Act changes for plan sponsors:

DISTRIBUTIONS & WITHDRAWALS

- **Required Minimum Distribution (RMD) Age Increase:** The SECURE Act increases the mandatory age individuals must begin taking RMD's from 70 ½ to 72 years old. Participants who turned 70 ½ prior to January 1, 2020 stays with the old rules. (Note: An RMD is not qualified to roll into an IRA.)
- **Modified Post-Death Required Minimum Distribution (RMD) Rule:** The SECURE Act requires that all distributions to beneficiaries after death (other than distributions to eligible designated beneficiaries such as surviving spouse, minor children, disabled/chronically ill persons, and < 10 years younger than employee) be made by the end of the 10th calendar year following the year of the participants death. *This rule will apply to define contribution but not defined benefit plans.*
- **Penalty-Free Disaster Distribution:** The SECURE Act provides that "qualified disaster distributions" up to $100,000 are exempt from the early distribution penalty tax if the distribution is taken in connection with federal disasters declared during the period between January 1, 2018 and 60 days after enactment.

- **Penalty-Free Withdrawals for Birth or Adoption:** If taken within 1-year of a birth or adoption, the SECURE Act allows each spouse to take a penalty-free withdrawal of up to $5,000 from their qualified defined contribution, 403(b), 457(b), and IRA prior to reaching age 59 ½ for expenses related to the birth or adoption of a child. Income tax will still be owed on the amount unless repaid within 60 days. Additional clarification is needed around whether re-payment will be made before or after tax. Child must be under the age of 18, and adoption of a step-child does not qualify.
- **Reduces the earliest age that an employee can receive in-service retirement benefits** from a pension plan from age 62 to age 59 ½.
- **Prohibits Plan Loans Through Prepaid Credit Cards or Similar Arrangements**. This is effective for loans made after the date of enactment.

ELIGIBILITY & ENROLLMENT

- **Safe Harbor 401(k)s:** The SECURE Act raises the *10% auto-escalation cap on automatic contributions to 15% after the employee's first plan year of participation*. It eliminates the annual safe harbor notice requirement for safe harbor plans that make non-elective employee contributions, and it expands the ability to add non-elective safe harbor contributions to their plans mid-year.
- **401(k) Eligibility for Part-time Employees:** The SECURE Act requires employers to permit long-term, part time employees who work at least 500 hours in 3 consecutive 12-month periods (starting after 1/1/2021) to participate in their plans. The employer does not have to provide a non-elective or match on behalf of such employees and may continue to impose an age-21 requirement.

ANNUITIES & LIFETIME INCOME

- **New Fiduciary Safe Harbor for Annuities:** The act clarifies safe harbor for a defined contribution plan fiduciary's selection of a lifetime income provider.
- **In-Plan Lifetime Annuity Rules Enhanced**: The SECURE Act encourages defined contribution plan sponsors to offer in-plan annuity options that provide lifetime income during retirement by creating a new fiduciary safe harbor for employers that include such options in their defined contribution plans. The Act also provides for tax-advantage portability for a lifetime income product from one plan to another or between plans and IRA's to help avoid surrender charges and penalties where the lifetime income product is removed from a particular plan.
- **Lifetime Income Disclosure in Statements**: The SECURE Act requires defined contribution plan sponsors to provide participants with *an annual estimate of monthly income (lifetime income disclosure) that they could receive in retirement if an annuity (joint & survivor and single life) were purchased with their current account balance.* This must be provided to participants at least once during any 12-month period.

IRAs & 529s

- **Traditional IRA Contributions**: The SECURE Act repeals the maximum age for contributing to traditional IRAs. Before the SECURE Act, contributions were only allowed until age 70½. (Note: contributions must be made from qualified income- social security benefit or RMDs do not qualify for IRA contribution.)
- **529 Plan Expansion:** The SECURE Act allows a lifetime amount of up to $10,000 of 529 education savings accounts to be used for student loan repayments. In addition, qualifying education expenses are expanded for costs associated with apprenticeships, trade schools, and private elementary, secondary, and religious schools.

MULTIPLE EMPLOYER PLANS (MEPS)

- **Open Multiple Employer Plans (MEPs):** The SECURE Act allows *employers in unrelated businesses* to participate in an "open" multiple employer retirement plan, now called a Pooled Employer Plan (PEP).

PENALTY INCREASES

- **Increased Penalty for Late Filing of Form 5500:** The SECURE Act significantly increases the penalties for failure to timely file a plan's Form 5500, the registration statement for deferred vested benefits Form 8955-SSA, and the notification of certain changes in a plan's registration information. The act also increases penalties for failing to timely provide a required withholding notice.

COMPENSATION & TAXATION

- **Higher Small Employer Tax Credits:** The SECURE Act increases the annual start-up credit for small employers that adopt a new retirement plan from $500 to up to $5000. Small employers who add automatic enrollment to their plan may also be eligible for a $500 tax credit per year for 3 years.

DEFINED BENEFIT

- **Extends Nondiscrimination Testing Relief**: Within closed or "frozen" defined benefit plans, new employees can no longer enter the plan. Closed plans can become discriminatory if the attrition rate of non-highly compensated employees outpaces the attrition rate of highly compensated employees. The SECURE Act includes testing relief that will make it easier for closed pension plans to satisfy certain discrimination testing requirements.

MISCELLANEOUS PROVISIONS

- **Consolidated Form 5500**: The SECURE Act directs the Department of Treasury and the Department of Labor to modify annual reporting rules to permit certain related individual account or define contribution plans (plans with the same trustee, fiduciary, administrator, plan year, and investment selections) to file a consolidated Form 5500.

- **Addresses Custodial Accounts on Termination of 403(b) Plans**: The SECURE Act requires that the Department of Treasury issue guidance within 6 months of enactment to allow an employer that is terminating a 403(b) plan to distribute amounts 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 amounts are paid to the participate or beneficiary. The guidance will be retroactively effective for taxable years beginning after December 31, 2008.
- **Changes Timing for Plan Adoption:** Employer can adopt a qualified retirement plan after the close of a taxable year if adopted before the deadline for filing the employer's tax return for that year, including extensions.
- **Clarifies that employees of certain church-related organizations** may be covered under a 403(b) plan that consists of a retirement income account.

HEALTH & WELFARE

- **Repeal of Medical Device, Health Insurance Providers, and Cadillac Tax**: The SECURE Act eliminates the Medical Device tax (on devices such as pacemakers which was part of the Affordable Care Act), Health Insurance Providers tax (annual health insurance tax on insurers of fully insured plans that was part of the Affordable Care Act), and the Cadillac Tax (excise tax on high-cost employer-sponsored health coverage enacted as part of the Affordable Care Act).

NEXT STEPS

- **When do changes take effect?** Many of the provisions of the SECURE Act became effective *immediately* (as of the date the Act was signed into law, December 20, 2019). Implementation of other provisions are dependent upon the start of the plan's year, or the employer's tax year beginning after December 31, 2019.
- **Plan Documents**: ***Almost all tax qualified retirement plans will need to be reviewed for possible amendments to reflect the SECURE Act.*** Amendments must be made on or before the last day of the first plan year beginning on or after January 1, 2022, with a delayed deadline for certain collectively bargained plans.
- **Plan Sponsor Actions**: Recordkeepers and administrators are reaching out to clients to make them aware of the SECURE Act and its impact on their plan. Plan sponsors should review their plan features and make decisions as to which of the optional provisions they would like to add to their plan.