The SECURE Act Finally is Enacted by Congress

By Charles M. Lax

In spite of congressional deadlock and before their holiday recess, Congress enacted the most significant and comprehensive retirement plan bill since the Pension Plan Protection Act of 2006. This legislation known as the Setting Every Community Up for Retirement Enhancement ("Secure Act") nominally is designed to assist small businesses in dealing with the administrative burdens and increased liability from mistakes when they consider the implementation of retirement plans and retirement benefits for their workers. Additionally, however, significant changes were made that will affect all retirement plans small and large as well all individual savors. Some of the many significant changes contained in the Secure Act include:

1. The elimination of "Stretch IRAs" whereby non-spouse beneficiaries were permitted to distribute inherited IRAs over their life expectancy. Now, the Secure Act non-spouse beneficiaries are generally required to fully distribute inherited IRAs no later than end of the 10th calendar year following the year of the IRA owner's death.

2. Under current law participants are generally required to begin taking distributions from IRAs and retirement plans at age 70 1/2. Since the 70 1/2 age limit has never been adjusted to take into account increases in life expectancy, the Secure Act provides that required minimum distribution must begin no later than age 72.

3. Under current law individuals are prohibited from making traditional IRA contributions after age 70 1/2. The Secure Act repeals the maximum age for traditional IRA contributions.

4. Under current law, all safe harbor 401K plans must provide a written safe harbor notice generally no later than the 30th day prior to the beginning of the plan year to participants. The Secure Act eliminates the need for a safe harbor notice for those plans meeting the safe harbor contribution requirement through a three (3%) percent non-elective contribution.

5. The Secure Act permits plan sponsors to first adopt safe harbor 401K plans with non-elective contributions at any time before the 30th day prior to the close of the plan year.

6. Under current law, new qualified retirement plans must be formally adopted prior to the year end during which it takes effect. Under the Secure Act, plan sponsors may adopt a new qualified retirement plan at any time prior to the due date of its taxable year (including extensions) and treat such plan as having been adopted as of the last day of that taxable year.

7. Under current law, employers may generally exclude part-time employees (those employees who work less than 1,000 hours per year). Under the Secure Act, employers maintaining a 401K plan must cover employees who have worked three consecutive years where they have completed more than 500 hours. With regard to these part-time employees, the employer may, however, elect to exclude such employees from testing under the non-discrimination and coverage rules and from the application of the top-heavy rules.

8. Under the Secure Act, distributions up to $5,000 made prior to age 59 1/2 where such distributions are used for child birth or adoptive expenses will be exempt from the 10% additional tax under IRC Section 72(t).

9. Current law prohibits in-service distributions prior to age 62 from defined benefit pension plans. Under the Secure Act, in-service distributions may be made as early as age 59 1/2.

10. Under current law, plans are permitted to distribute plan loans through the use of credit cards or other similar arrangements. Under the Secure Act, effective immediately, qualified plans are prohibited from making loans through credit cards and similar arrangements.

11. To encourage the adoption of new qualified retirement plans, the Secure Act increases the credit amount available to small employers for their start up costs. Under the new law, the maximum tax credit is equal to the greater of $500 or the lesser of:

i. $250 for each employee of the employer who is not a highly compensated employee; or

ii. $5,000.

12. The Secure Act will require benefit statements provided to defined contribution plan participants to include a lifetime income disclosure at least once every 12 months. The Secretary of Labor will be directed to issue model disclosure statements that may be utilized by plan fiduciaries.

13. Under current law, plans may be “pooled together” only if there is a nexus between the adopting employers. Under the Secure Act, unrelated employers may join together as a “pooled employer plan” or a “multiple employer plan” (“MEP”) thereby deriving benefits from reduced costs and improved administration and increased investment returns.

Much of the Secure Act is effective for years beginning after December 31, 2019. There are, however, some provisions with delayed effective dates and others that actually became effective on the date the new law was adopted. Stay tuned for more information as guidance is issued by the Internal Revenue Service and other federal agencies.