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SECURE Act: Considering Implications of Changes to Required Minimum Distribution Rules

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As previewed in our prior blog post, the recently enacted SECURE Act includes many changes that affect employer-sponsored benefit plans and require the attention of plan administrators. Among these changes, effective for distributions made after December 31, 2019 (for individuals who reach age 70½ after that date), is the delay of the "required beginning date" for required minimum distributions from qualified retirement plans.

Under pre-2020 rules, distributions from a qualified retirement plan (including 401(k) plans) must generally begin to be made by April 1 of the calendar year after the later of the year in which an employee turns 70½ or retires (terminates employment). If someone is a 5% owner, distributions must begin to be made by April 1 of the year after the year in which the person turns age 70½, regardless of when the individual terminates employment.

The SECURE Act changes the required beginning date age from age 70½ to age 72. This change is effective for distributions made after December 31, 2019 for employees who reach age 70½ after that date. The old rule stays in place for people who reached age 70½ *before* 2020.

Example. Mary is an employee at ABC Company and reached age 70½ on August 1, 2019 (she turned age 70 on February 1, 2019). Mary is not a 5% owner at her company and she will terminate employment on September 1, 2020. The new SECURE Act rule does not apply to Mary. Mary's required beginning date is **April 1, 2021** (April 1 of the year after she terminates employment).

Example. John is an employee at ABC Company and will reach age 70½ on February 1, 2020 (he turned age 70 on August 1, 2019). John is not a 5% owner at his company and he will terminate employment on September 1, 2020. The new SECURE Act rule applies to John. John's required beginning date is **April 1, 2022** (April 1 of the year following the later of his attainment of age 72 (which will happen August 1, 2021) or termination of employment (which will happen September 1, 2020)). Before the SECURE Act change, John's required beginning date would have been April 1, 2021.

From a plan operation and administration perspective, this change gives rise to a number of questions and considerations:

- **Timing is everything.** Note that the effective date can impact employees differently depending specifically on when they reach age 70½. As the examples above show, two employees who terminate on the same date in 2020 will have different required beginning dates depending on when they reach age 70½. Plan administrators should look at their procedures, and work with their vendors as needed, to ensure that distributions are made in accordance with the appropriate timeline. This will require updates to plan procedures as well as system programming. The IRS indicated in Notice 2020-6 that the IRS and the Department of the Treasury are considering guidance for plan administrators, payors and distributees for a situation in which a required minimum distribution is made for a participant who reaches age 70½ in 2020, suggesting that the IRS is already anticipating foot faults in connection with the transition to the new required minimum distribution rules.
- **Actuarial increases for defined benefit plans**. When an employee continues to work beyond the calendar year in which the individual attains age 70½, the federal tax Code (Section 401(a)(9)(C)) requires that a qualified defined benefit plan provide for an actuarial increase to that employee's accrued benefit to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan. Even though the required beginning date for plan distributions moved from April 1 following the later of the year in which an employee retires or reaches age 72 (up from age 70½), the age for purposes of determining actuarial increases has not changed and remains at age 70½.
- **Effect on life expectancy and distribution period tables**. The IRS issued proposed regulations on November 8, 2019 updating the life expectancy and distribution period tables that are used to calculate required minimum distributions from qualified retirement plans. These updated tables were prepared by the IRS based on a required beginning date of age 70½. It is unclear whether the IRS will update the tables to reflect a required beginning date of age 72 (for those to whom age 72 is relevant).
- **Update plan documentation.** Plan sponsors should review their plan documents, SPDs, rollover and distribution notices (so-called 402(f) notices), distribution forms, and participant communications to make sure they accurately describe the new rule and the participants to whom the new rule applies. Do not assume that existing plan language can remain in place indefinitely. The SECURE Act does provide for a delayed time for making appropriate plan amendments. However, because this change impacts participants in real time, it will be important to begin the written changes and communications as soon as possible.
- **Change applies to surviving spouses.** The required minimum distribution rules include a timing rule applicable when a participant dies before the required beginning date and a surviving spouse is the beneficiary. Under that rule, the spouse could delay distributions until the participant would have reached age 70½. The SECURE Act amended this age to conform to the new age 72 rule.

In addition to the change to the required beginning date rules, the SECURE Act changed the period over which distributions must be made following a participant's death. These rules will be covered in an upcoming blog in our SECURE Act series.

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