Client Alert

June 2019

House Passes Bipartisan Retirement Relief Reform Bill

On May 23, 2019, the House of Representatives passed the Setting Every Community Up for Retirement Enhancement Act ("SECURE Act") with an almost unanimous vote of 417-3. Although the bill moved quickly through the House of Representatives, it faces hurdles in the Senate. Senate leadership has indicated that it will not bring the bill up for a full floor consideration unless there is unanimous consent. At the present time, it seems that up to six Senators may object.

SECURE Act Overview

Main retirement provisions of the SECURE Act include:

- **Multiple Employer Plans (MEPs).** Encourages employer-provided plans by allowing unrelated businesses to pool or combine their resources into a new type of MEP called Pooled Employer Plans. This new plan would be treated as a single plan under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and would supersede certain current provisions of the Internal Revenue Code and U.S. Department of Labor regulations. U.S. Department of Labor guidance currently prevents unrelated businesses from participating in a single plan. Current Internal Revenue Service qualification rules that would result in disqualification of MEPs would be adjusted. This is a key provision of the SECURE Act and would be a significant step towards mitigating what many legislators have noted as a retirement plan crisis for many small businesses that currently do not offer retirement plan options.

- **Simplification of Safe Harbor 401(k) Rules.** Elimination of the annual notice requirement for nonelective safe harbor 401(k) plans. Plan amendment deadlines would be extended to any time up to the 30th day before the close of a plan year. Amendments could be made thereafter if the amendment provides a four percent nonelective contribution for plan participants and the plan is

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amended by the last day for distributing excess contributions for the plan year.

- **Small Employer Tax Credits.** Creation of new nonrefundable tax credits to employers of up to $500 per year, while also increasing the existing tax credit for small-employer pension plan startup costs. The new credit would be available for three tax years and would defray startup costs for new 401(k) and Simple IRA plans with automatic enrollment.

- **Traditional IRA Contribution Age Repeal.** Elimination of the maximum age for contributions to traditional IRAs. Currently, individuals cannot contribute to an IRA after attaining the age of 70.5.

- **401(k) Plans for Long-Term, Part-Time Workers.** Part-time employees will have the opportunity to participate in 401(k) plans. Currently, defined contribution plans can exclude employees working fewer than 1,000 hours per year. The bill extends participation to long-term, part-time workers who have worked for at least three consecutive years and have completed at least 500 hours of service during a plan year.

- **Penalty-Free Withdrawals in Cases of Birth of Child or Adoption.** Creates a carve out from the current 10 percent early withdrawal tax penalty for retirement accounts. Retirement accounts include qualified defined contribution, 403(b) and government 457(b) plans, as well as IRAs. The rules would allow parents to withdraw up to an aggregate amount of $5,000 without the 10 percent penalty in the event of a "qualified" birth or adoption of a child which must occur within one year of the child's birth or adoption finalization.

- **Age Increase for Required Beginning Date for Mandatory Distributions.** The age for Required Minimum Distributions ("RMD") would be delayed until age 72. RMD refers to the amount that IRA account owners and qualified plan participants must begin to withdraw from those accounts by April 1st following the year they reach age 70.5. This would affect individuals turning 70.5 after December 3, 2019.

- **Modifications to Required Minimum Rules.** The bill would accelerate the depletion of inherited accounts and end stretch IRA planning. Currently, designated beneficiaries have the option to spread distributions over their own life expectancy in certain circumstances. The SECURE Act's tax-generating provision would shorten the distribution period to 10 years from the original

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owner's death. This provision does permit an exception to the 10-year rule for "eligible beneficiaries." Eligible beneficiaries include but are not limited to beneficiaries who, as of the date of death, are surviving spouses, disabled, or chronically ill, and children of the employer who have not reached the age of majority.

- **Increased Penalties for Failure to File Retirement Plan Returns.** The amount of failure to file penalties would increase dramatically. The penalty increases will apply to failures to file annual Form 5500 reports to $105 per day (but not to exceed a $50,000 maximum), required withholding notices to $100 per day (but not to exceed a $50,000 maximum), and registration statements for deferred vested benefits and required notifications of changes to deferred vested benefits to $10 per day (but not to exceed the maximum $50,000 and $10,000, respectively).

The SECURE Act is intended to extend access to retirement plans to many Americans and to raise revenue. However, faster distributions of inherited IRAs and retirement plans through modifications to RMD rules can cause undesired tax burdens. The bill will end stretch IRAs often created as safety nets for beneficiaries. These changes may further complicate estate and retirement planning, resulting in increased demand for more strategic estate planning and ROTH conversions.

Senate Retirement Bills

A companion bill to the SECURE Act was introduced in the Senate, the Retirement Enhancement and Savings Act of 2019 ("RESA"). RESA provisions also permit "open" multiple employer plans and end stretch IRAs for large inherited accounts. Instead of a 10-year distribution cap, distributions would be required within five years unless the designated beneficiary is a spouse.

If you have any questions regarding this topic or any other matter relating to your retirement plans, please contact the Olshan attorney with whom you regularly work or Stephen Ferszt.

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