January 2020 *Spotlight* on Important SECURE Act Provisions For Financial Advisers

The new year promises to provide plentiful opportunities for financial advisers to gain business and to demonstrate expertise to existing clients. As you likely know, the SECURE Act was signed into law on December 20, 2019. Many of the Act's provisions took effect on January 1, 2020. Most of them offer real benefits to your clients; other provisions may not be as helpful, but you still need to understand them to provide the best service possible. This *Retirement Spotlight* focuses on a half-dozen SECURE Act provisions that will make the most significant impact on your retirement plan practice.

Let's start with three provisions that you will most certainly get questions on.

1) **Traditional IRA owners can now contribute after age 70½.** Since they were first available in 1998, Roth IRAs could receive contributions from individuals over 70½ provided that they were otherwise eligible. That is, Roth IRA owners had to have earned income—but not *too much* income. Now Traditional IRA owners will enjoy the same benefit. Your clients that continue to work—or that have working spouses—will be able to contribute even after they reach age 70½.

   More of your clients may be working well past the "normal retirement age"; now they can also keep contributing to their Traditional IRAs. Even though they may have to take required minimum distributions at the same time that they contribute to their IRAs, there is a good chance that they will be able to contribute more than they have to distribute each year. So this provision is a great way for your clients to ensure that they have sufficient retirement assets once they stop working.

2) **Traditional IRA required minimum distributions (RMDs) will now start at age 72.** Not only can your clients make Traditional IRA contributions past age 70½, but now they can begin taking RMDs later. If your clients turn age 70½ in 2020 or later, they now can wait until age 72 to begin taking RMDs. Specifically, they will have until April 1 of the year following the year they turn 72 to take their first RMD. This year-and-a-half delay is not necessarily the big relief that some in the retirement industry had hoped for. But this change certainly provides some benefit.

   Based on increased life expectancies over the past several decades, Congress could have increased the starting age to 75 or later. There are, however, significant revenue implications for any delay in the RMD starting date. So this age-72 requirement was a bit of a compromise. The important thing to remember is this: *if your client already turned age 70½ by the end of 2019, then RMDs cannot be delayed under the new rule*. In other words, all of your clients born on or before June 30, 1949, are subject to the old rule, which makes the 70½ year the first distribution year.

3) **"Stretch IRAs" as we now know them are disappearing.** For decades, IRA and qualified retirement plan (QRP) beneficiaries were able to take death distributions over their life expectancies. For example, a 20-year-old grandchild could distribute a grandparent's IRA balance over 63 years. But now this generous provision has been altered to require faster distributions (generally over a 10-year time frame), which is designed to increase federal revenue. Nonspouse beneficiaries of account owners who die on or after January 1, 2020, are subject to this new rule, unless they are

- disabled individuals,
- certain chronically ill individuals,
- beneficiaries whose are not more than 10 years younger than the decedent's age,
- minor children of the decedent (they must begin a 10-year payout period upon reaching the age of majority), or
- recipients of certain annuitized payments begun before enactment of the SECURE Act.

We expect that this change to the distribution rules will create considerable confusion for clients. They may be subject to two separate sets of beneficiary distribution rules, depending on the date of the account owner's death. Some beneficiaries, such as spouses, will have the same options that we are familiar with; many others will face an accelerated payout. It may take time for the industry to sort through the many questions that will arise. And we may have to wait for definitive guidance from the IRS. But meanwhile, you can assure your clients that, while the beneficiary rules for both IRAs and QRPs have changed considerably, no immediate action is needed.

The second group of changes involves employer-sponsored retirement plans and not IRAs specifically. Still, each of them could provide potential benefits to your clients.

4) **Employers may adopt a qualified retirement plan (QRP) up until their tax return due date, plus extensions.** If you have clients that are also business owners, you have probably been asked at year end, "What can I do to reduce my tax burden?" For employers without a retirement plan, establishing such a plan can be a great idea. But QRPs were generally required to be adopted by the end of the employer's tax year. (SEP and SIMPLE IRA plans have different deadlines.) Trying to quickly establish a new plan at year-end could cause unwanted stress and could lead to hasty decisions and compliance problems. Starting with 2020 tax years, employers may establish a QRP by their tax return due date, plus extensions. For example, unincorporated business owners could establish a plan for the 2020 tax year until October 15, 2021, if they have a filing extension.

   This new rule aligns the deadline for QRP establishment with the current SEP IRA plan adoption deadline. And though we still expect that some of your client employers will wait until the last minute to act, at least this new provision gives them more flexibility and options. Keep in mind, however, that salary deferrals must be made prospectively. So establishing a 401(k)-type "cash or deferred arrangement" will not allow plan participants to defer salary or wages that they have previously earned.

5) **Safe harbor 401(k) plans now have more contribution flexibility.** Businesses with employees sometimes struggle to pass certain 401(k) testing requirements. Simply stated, plans are generally not allowed to provide highly compensated employees (including owners) with benefits that disproportionately favor them over the nonhighly compensated employees. One such test compares the salary deferrals of these two groups. To pass this test, owners (especially) often end up with much smaller deferrals than they would like. Fortunately, a "safe harbor" 401(k) provision deems this test to be passed, but only if the plan guarantees a healthy matching or nonelective contribution for rank-and-file employees. Unfortunately, detailed notification and timing requirements made these safe harbor provisions less than user friendly. For example, under one scenario, an employer could have made a three percent nonelective contribution in order to pass the nondiscrimination test—but only if the employer had notified employees, *before* the plan year started, that she *might* make this contribution to pass the test. In addition, the employer would have had to amend the plan *before* 30 days of the plan year end in order to take advantage of the testing relief. Now, employers can get the same testing relief, without a "pre-notice" and with substantially more time to

amend the plan: instead of amending before the end of the current plan year, employers can amend their plan up until the end of the *following* plan year end if they make a four percent contribution to all eligible employees rather than a three percent contribution.

All of this is to say that employers now can enjoy much more flexibility when they adopt a safe harbor 401(k) plan. By some credible estimates, 30-40% of 401(k) plans that cover employees (in addition to owners) use this safe harbor feature. Making compliance easier for these plans—and for yet-to-be-adopted plans—is a great benefit. And learning more details about this provision will help you better serve your clients.

6) **Tax credits for small employers may help jump-start retirement plans.** The SECURE Act provides two tax credits for small employers: one provision gives a $500/year startup credit for new 401(k) or SIMPLE IRA plans that include an automatic enrollment provision; another provision increases a startup credit (up to $5,000) for any small employer that adopts a qualified plan, SEP, or SIMPLE plan. Both credits are available to employers for three tax years, beginning with the start-up year. While these incentives may not—in and of themselves—convince an employer to adopt a retirement plan, they may take some of the financial sting out of the decision and prove that Congress is serious about increasing retirement plan coverage in America. Letting your clients know about these helpful tax credits can solidify your value in their eyes.

These six new provisions are likely to get a fair amount of coverage in the mainstream media and in the retirement industry. This *Retirement Spotlight* should help you discuss these changes more effectively with your clients. But keep in mind that the SECURE Act contains the most significant retirement plan changes in 15 years. There are many other provisions that affect IRAs and QRPs—and there are many questions that have already arisen about specific provisions and how certain changes should be implemented. As federal guidance is released, [Ascensus](#) will continue to share thoughtful analysis and practical insights.