

Publications

SECURE ACT Impacts Distributions Under Governmental Plans and Other Areas Affecting Plan Administration

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The [Setting Every Community Up for Retirement Enhancement Act of 2019](#) (the “SECURE Act”) has made a number of changes to Internal Revenue Code requirements for governmental plans, particularly in the required minimum distribution (RMD) requirements of Internal Revenue Code section 401(a)(9) and made a number of other changes to the plan distribution rules. Accommodating these changes may present particular administrative burdens for public plans. Governmental plans should start considering what changes in plan terms, recordkeeping, reporting and communications may be necessary to reflect the new distribution rules.

Distribution Changes Affecting Governmental Plans

A. Summary of the Distribution Changes

DB and DC

Increase in RMD Age. The SECURE Act increases the age at which required minimum distributions must begin from 70 ½ to 72. This is effective for individuals turning 70 ½ after December 31, 2019. This is the main change for defined benefit plans.

In-Service Distribution Age Lowered. To raise revenue, the separate Bipartisan American Miners Act allows (but does not require) in-service distributions under a pension plan (e.g., a defined benefit or money purchase plan) or governmental section 457(b) plan at age 59 ½ (rather than age 62 that was permitted for pension plans or age 70 ½ that was permitted for 457(b) plans). This is effective for plan years beginning after December 31, 2019.

DC Only

New 10 Year Deadline for Beneficiary Distributions: For non-defined benefit plans, the SECURE Act generally requires that all distributions after death to a designated beneficiary be made by the end of the 10th

calendar year following the year of death. However, exceptions include if the designated beneficiary is, as of the date of death, a surviving spouse, disabled, chronically ill (including certain trusts for the disabled/chronically ill), not more than 10 years younger than the employee, or a child of the employee (or IRA owner) who has not reached the age of majority or payments under certain qualified annuities in effect on the date of enactment. While this is effective for private sector plan distributions because of a participant's death after December 31, 2019, the deadline for governmental plans (and certain collectively bargained plans) is December 31, 2021.

Qualified Birth or Adoption Distributions. The SECURE Act permits individuals to take penalty-free withdrawals of up to \$5,000 (on a controlled group basis) from their qualified defined contribution, 403(b), and governmental 457(b) plans and IRAs for expenses related to the birth or adoption of a child for up to one year following the birth or legal adoption. This is effective for distributions after December 31, 2019.

B. Amendment Deadline

The Act includes a special remedial amendment period until no earlier than the end of the 2024 plan year for governmental plans.

C. What Are Some of The Issues in the Distribution Changes?

- i. *Shifting the RMD Commencement Age to 72:* Fortunately, under the effective date rules, the distributions to any participant currently receiving RMDs or beginning RMDs by April 1, 2020 because they had attained age 70 and ½ on or before December 31, 2019 will not have to be changed. But for participants attaining age 70 and ½ in 2020 and thereafter, the plan will need to change its systems to not start automatically commencing benefits by the following April 1, and be reprogrammed to commence benefits by April 1 following the year in which the participant attains age 72. Such changes, and effectively running parallel distribution systems, may not be easy.
- ii. *Reporting on the 1099-R.* RMDs are not eligible for rollover and are subject to 10% voluntary withholding, while amounts that are not RMDs are generally eligible for rollover and are subject to mandatory 20% withholding. With the change in the RMD commencement age from 70 and ½ to 72, withholding and reporting will need to be adjusted for any distributions during this period, such as distributions not in the form of an annuity, from the 70 ½ distribution date to the age 72 distribution date that may be eligible for rollover.
- iii. *Changing Distribution Rules for DC Plan Beneficiaries.* For governmental plans, the distributions to a designated beneficiary after death will need to comply with the 10-year rule (or one of its exceptions) for participants dying after 2021.

D. Some Decisions May Need to be Made

Governmental plans may wish to consider the impact of lowering of the age permitting in-service distributions. Most public plans that are defined benefit do not allow in-service distributions at any age, so it may be a moot point for them, but for public plans that often do allow in-service distributions, such as governmental 457(b) plans, it is something that may be considered. Governmental defined contribution plans may also wish to consider adding distribution options for birth or adoption.

Other SECURE Act changes that may affect governmental plans

A. Deemed IRA Contributions After 70½

The SECURE Act repeals the prohibition on contributions (and deductions) to a traditional IRA for individuals who have attained age 70 ½ by the end of a year. Effective for contributions made for taxable years beginning after December 31, 2019. For governmental plans that include “deemed” or “side car” IRAs, they may wish to start allowing such contributions.

B. Benefits for Volunteer Firefighters and Emergency Medical Responders

The SECURE Act reinstates, for one year, the exclusions for state or local tax benefits and qualified reimbursement payments provided to members of volunteer emergency response. Organizations under Code section 139B. Effective for taxable years beginning after December 31, 2019.

C. Termination of Public 403(b) Plans

The SECURE Act provides that the Secretary of the Treasury will issue guidance that will provide that, if an employer terminates a 403(b) plan, the account can be distributed in-kind to a participant or beneficiary, similar to the rules for 403(b) annuity contracts. The individual custodial account will be maintained on a tax-deferred basis as a 403(b) custodial account until paid out, subject to compliance with the 403(b) rules in effect at the time that the individual custodial account is distributed. This is retroactively effective for plan years beginning after December 31, 2008.

Next Steps

Governmental plan sponsors will want to consider the impact of these changes on their DB and DC plans. Groom can assist plans in evaluating this. While amendment to plan provisions (statutes, regulations or policies, as necessary) may be required, changing administrative systems to accommodate the new rules could be a particular area of concern. Plan communication and form changes will also likely be necessary.