



STATE OF WISCONSIN
Department of Employee Trust Funds
Robert J. Conlin
SECRETARY

Wisconsin Department
of Employee Trust Funds
PO Box 7931
Madison WI 53707-7931
1-877-533-5020 (toll free)
Fax 608-267-4549
etf.wi.gov

Correspondence Memorandum

Date: February 6, 2020

To: Deferred Compensation Board

From: Tarna Hunter, Director of Government Relations and Strategic
Engagement
Office of the Secretary

Dan Hayes, Attorney
Office of Legal Services

Shelly Schueller, Director
Wisconsin Deferred Compensation Program

Subject: The 2019 SECURE Act and Bipartisan American Miners Act

This memo is for informational purposes only. No action is required.

The federal "Setting Every Community Up for Retirement Enhancement Act" (SECURE Act) and Bipartisan American Miners Act of 2019 became law on December 20, 2019. There are several provisions in the legislation that impact s. 457 plans, including the Wisconsin Deferred Compensation Program (WDC).

SECURE Act

- Required Minimum Distributions (RMDs): increases the age for RMDs from 70½ to age 72. This provision is mandatory and is effective for participants who turn age 70½ on or after January 1, 2020.
- Inherited Account Assets: modifies required minimum distribution rules by requiring distribution of inherited account assets within ten years of the death of the participant (account owner). Essentially, this rule "limits the ability of beneficiaries to a defined contribution account or IRA to draw down the account balance over their lifetime. Currently, beneficiaries may elect to receive such payments over their lifetime. Under SECURE they must receive the entire balance within 10 years. There are exceptions for a surviving spouse, minor children, disabled individuals and beneficiaries less than 10 years younger than the original account owner." This provision is mandatory, and effective for deaths

Reviewed and approved by Pamela Henning, Assistant Deputy
Secretary

Pamela L Henning

Electronically Signed 2/18/20

| Board | Mtg Date | Item # |
|-------|----------|--------|
| DC | 3.12.20 | 8 |

occurring on and after January 1, 2022. (source: *Focus on 457*, December 2019, Empower Retirement)

- **Withdrawals for Individuals in Case of Birth or Adoption:** permits penalty-free withdrawals of up to \$5,000 if the withdrawal is made during a one-year period beginning on the date of birth of the participant's child or the date the participant finalized an adoption (excluding the adoption of a child of the participant's spouse). Under this provision, participants may also repay these withdrawals to their plan. This provision is optional, beginning on or after January 1, 2020.
- **Portability of Lifetime Income Options:** allows qualified plans to make direct trustee-to-trustee transfers of a lifetime income investment option in the form of a qualified plan distribution annuity, if such an option is no longer authorized to be held as an investment option under the plan. Note: Although this is permitted for s. 457 plans under the SECURE Act, this rule does not directly impact the WDC at this time as the WDC does not currently offer lifetime income options. This provision is optional, beginning on or after January 1, 2020.

Bipartisan American Miners Act

- **In-service Distributions:** permits in-service distributions from s. 457 plans at age 59 ½ instead of the previous age of 70 ½. This rule is optional, beginning on or after January 1, 2020.

ETF is still analyzing these changes and their impact to the WDC program. The WDC's record keeper, Empower Retirement, is identifying likely revisions to their record keeping systems, processes, communications and forms that will be necessary for Empower to implement the new law provisions. Empower is focusing on the RMD age change and the inherited account assets change first. In addition, both the Internal Revenue Service and the federal Department of the Treasury are expected to issue guidance later this year. After ETF's analysis is complete, Empower has made the necessary revisions to the recordkeeping system, and additional federal guidance has been released, ETF will draft potential changes to the Plan and Trust to present to the Board for discussion.

Staff will be available at the meeting to answer questions.

Attachment A: *SECURE Act Becomes Law*. Ice Miller. December 27, 2019.

Attachment B: Focus on 457 SECURE Act Update



December 27, 2019

Robert L. Gauss, Lindsay Knowles, Lisa Erb Harrison, Audra J. Ferguson-Allen, Tara Schulstad Sciscoe, Christopher S. Sears

Professionals

- Audra Ferguson-Allen
- Robert Gauss
- Lisa Erb Harrison
- Lindsay Knowles
- Tara Sciscoe
- Christopher Sears

Related

- Employee Benefits
- Church Benefit Plans
- Government Benefit Plans
- Retirement Plans

SECURE Act Becomes Law

On December 20, 2019, the Setting Every Community Up for Retirement Enhancement Act ("SECURE Act") became law when President Trump signed Congress' year-end spending package. Some have called the SECURE Act the most comprehensive piece of retirement legislation in over ten years. Certainly, this may be true for private sector retirement plans and for small, unrelated employers, which now are allowed to participate in a new type of multiple employer plan, referred to as a "Pooled Employer Plan." However, as we discussed in our e-alert dated May 24, 2019, there also are some significant provisions about which governmental plan sponsors and administrators must be aware. The key provisions, which may affect governmental plans, are as follows:

• **Modification to Required Minimum Distribution Rules**

For certain defined contribution plans, when (1) the employee dies before distribution of his/her entire interest and (2) distributions following the employee's death are to be made to designated beneficiaries who are not "eligible death beneficiaries," the SECURE Act requires the distributions to be made within ten (10) years of the employee's death. Importantly, the term "eligible designated beneficiary" includes a surviving spouse, a child of the employee who has not yet reached the age of majority, an individual who is disabled or chronically ill, and an individual who is not more than ten years younger than the employee. While this new rule would go into effect for distributions with respect to employees who die after December 31, 2019, for governmental plans (as defined by Code § 414(d)) the rule would apply with respect to employees who die after December 31, 2021.

• **Required Beginning Date**

The bill increases an individual's required minimum distribution age from age 70½ to age 72. As a result, **for distributions required to be made after December 31, 2019 with respect to individuals who attain age 70½ after such date**, the age for the required beginning date for mandatory distributions is increased to age 72.

• **Repeal of Maximum Age for Traditional IRA Contributions**

The maximum age for traditional IRA contributions under Code § 219(d) is repealed for contributions made for taxable years beginning after December 31, 2019. This provision affects governmental plans that contain a Deemed IRA feature.

- **Plan Loans** Plans are prohibited from making loans through the use of a credit card or similar arrangement. This prohibition applies to loans made after the date of the enactment of the Act.

- **Portability of Lifetime Income Options**

The Act allows qualified defined contribution plans, 401(k) plans, Section 403(b) plans, or governmental Section 457(b) plans to make a direct trustee-to-trustee transfer to another employer-sponsored retirement plan or IRA of lifetime income investments or distributions of a lifetime income investment in the form of a qualified plan distribution annuity, if a lifetime income investment is no longer authorized to be held as an investment option under the plan.

- **Treatment of Custodial Accounts on Termination of Section 403(b) Plans**

The Treasury is directed to issue guidance to provide that, if an employer terminates a 403(b) custodial account, the distribution upon termination may be the distribution of an individual custodial account in kind to the participant or beneficiary, which shall continue to be maintained as a 403(b) custodial account. The Act requires the guidance to be retroactively effective for taxable years beginning after December 31, 2008.

- **Withdrawals for Individuals in the Case of Birth or Adoption**

The Act creates a new exception under Code Section 72(t) and permits penalty-free withdrawals of up to \$5,000 from "eligible retirement plans" if the withdrawal is made during a one-year period beginning on the date of the birth of the individual's child or on the date the individual finalizes an adoption (excluding adoption of the child of the taxpayer's spouse). The Act also allows for the repayment of such "qualified birth or adoption distributions." Importantly, for purposes of these provisions, "eligible retirement plans" **do not include** defined benefit plans.

- **Treatment of Difficulty of Care Payments as Compensation**

The Act creates a special rule under Code Section 415(c) for difficulty of care payments, which are otherwise excluded from gross income under Code Section 131. As a result, such difficulty of care payments are considered compensation for purposes of making contributions to a defined contribution plan. Importantly, under this new rule, the contributions are treated as after-tax. This provision applies to plan years beginning after December 31, 2015. The effective date of these provisions for purposes of IRA contributions is the date of enactment of the Act

- **Benefits for Volunteer Firefighters and Emergency Medical Responders**

The Act reinstates for tax year 2020 an individual taxpayer gross income exclusion for qualified state or local tax benefits and qualified payments available for members of qualified volunteer emergency response organizations. The Act increases the exclusion for qualified reimbursement payments (available for each month of volunteer service) from \$30 to \$50.

- **Fiduciary Safe Harbor for Selection of Lifetime Income Provider**

Under ERISA, an optional safe harbor is established for meeting the fiduciary duty in selecting insurers for a guaranteed retirement income contract. While not directly applicable to governmental plans, this could provide a useful "roadmap" for governmental plans, which might consider such option.

- **Penalties**

The Act increases failure to file penalties, including the following increased penalties under Code Section 6652(e): the failure to file penalty is \$105 per day, not to exceed \$50,000; the failure to file a registration statement penalty is \$2.00 per participant per day, not to exceed \$10,000; the failure to file a notification of change penalty is \$2.00 per day, not to exceed \$5,000; and the failure to provide a required withholding notice penalty if \$100 for each failure, not to exceed \$50,000 for all failures during any calendar year.

We anticipate the Treasury and IRS will issue guidance during 2020 regarding these new provisions (and the other provisions of the SECURE Act) and will continue to monitor for such developments.

For more information about how the SECURE Act might affect your employee benefit plans, please contact Audra Ferguson-Allen, Robert L. Gauss, Tara S. Sciscoe, Christopher Sears, Lisa E. Harrison, Lindsey Knowles or the Ice Miller Employee Benefits attorney with whom you work.

This publication is intended for general information purposes only and does not and is not intended to constitute legal advice. The reader should consult with legal counsel to determine how laws or decisions discussed herein apply to the reader's specific circumstances.

FOCUS ON 457SM

SECURE Act update

Governmental defined contribution plans

As we have previously communicated in an earlier Focus on 457, President Trump signed into law the Further Consolidated Appropriations Act, 2020, (FCAA) on Friday, December 20, 2019. The FCAA incorporates (1) the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) and (2) the Bipartisan American Miners Act of 2019. These include important changes that will impact governmental plans and participants.

Empower Retirement (Empower) believes the changes made to defined contribution plans in the FCAA legislation are generally positive. However, its passage so late in the year, without delayed effective dates, presents implementation challenges for service providers and plan sponsors alike. As part of Empower's ongoing SECURE Act implementation efforts, we have drafted this document to help plan sponsors understand their obligations and update you on Empower's efforts to effectively implement provisions of the new law.

Empower SECURE Act implementation

Empower is actively working with others in the industry to request IRS and Treasury guidance required to implement the new SECURE provisions. We have also asked these agencies for temporary enforcement relief, so those working in good faith to comply with the new provisions will not be subject to negative consequences for actions taken prior to when all required changes can be implemented. It is very common for these agencies to provide this type of relief in these circumstances. We will keep you apprised of any additional guidance as it is released.

Empower has an implementation project team in place, with separate sub groups reviewing each of the new requirements. We started preparing for SECURE early in 2019 once we saw the broad support it enjoyed in Congress. Thus, once the necessary guidance is received from the IRS and Treasury, we will be able to complete implementation of the mandatory provisions effective January 1, 2020. We will provide implementation timing updates as they become available.

This article describes:

- Whether new provisions are mandatory or optional.
- What actions need to be taken by employers.
- Implementation issues.
- Remedial amendment period deadline for amending governmental plan documents.
- Details of selected new provisions for governmental employers to focus on.

Mandatory provisions

Employers must operate their plans in compliance with all mandatory provisions on and after the effective date of each provision. Mandatory provisions for governmental plans:

- The required beginning date (RBD) age for required minimum distributions (RMDs) is increased from age 70½ to age 72. **Effective for participants who turn age 70½ on or after January 1, 2020.**
- In general, a 10-year rule for payment of a participant's entire account balance following death applies to beneficiaries, with certain exceptions. **Effective for deaths occurring on and after January 1, 2022.**

Optional provisions

Employers may choose which optional provisions to adopt for their plans. A plan must be operated in compliance with each provision as of the adoption date elected by its plan sponsor. The optional provisions for governmental plans that are effective for adoption on or after January 1, 2020, subject to our ability to implement them, are:

- Withdrawals for birth or adoption.
- Permissible in-service withdrawals from 457(b) plans at age 59½.
- Portability of lifetime income options.

ERISA provisions

The following provisions apply only to plans subject to ERISA. Some governmental plans may want to consider them as best practices.

- Safe harbor for a plan sponsor's selection of annuity providers **effective on and after January 1, 2020**
- Lifetime income disclosures **effective at least 12 months after the DOL issues guidance**

Implementation issues

Currently, Empower's critical priority items are the mandatory provisions: increase in the RMD age to 72 and the beneficiary RMD rule change requiring a 10-year payout for some beneficiaries. We have implemented changes to our recordkeeping systems to identify participants turning age 70½ in 2020 or later as subject to the new RMD rules and to exclude this population from RMD processing until they have attained age 72. We are now focused on updating participant forms, participant RMD reminder letters and RMD reports provided to plan sponsors. In addition, although not required for governmental plans until 2022, as we continue to work diligently on the changes to the post-death beneficiary payments, we have identified several areas in which additional IRS guidance is required to fully implement these provisions.

The optional provisions are also a high priority, and we are identifying necessary revisions to plan participant communications, forms, tax notices and administrative processes. We will provide timing updates when they become available.

Remedial amendment period for governmental plans

Plan document amendments for all SECURE Act mandatory provisions and any SECURE Act optional provisions adopted by the employer must be adopted **by the end of the 2024 plan year**.

The optional provision allowing in-service withdrawals from 457(b) plans at age 59½, however, was not in the SECURE Act. Thus, the amendment deadline for this provision is unclear. In conjunction with our industry partners, we have asked for guidance from the IRS and are hopeful that the amendment deadline for this provision will also be the last day of the 2024 plan year (December 31, 2024, for calendar-year plans). We will keep you apprised as soon as the IRS issues guidance on the amendment due date.

Detailed description of selected new provisions**Required beginning date (RBD) for required minimum distributions (RMDs) — Mandatory**

The age at which RMDs must begin is changed for participants who attain age 70½ on or after January 1, 2020. For those participants, the RBD is April 1 following the year the participant attains age 72 or severs service, whichever is later. The former age 70½ rule continues to apply to anyone who attained age 70½ in 2019 or before.

Required minimum distributions (RMDs) for designated beneficiaries — Mandatory

Previously, designated beneficiaries could receive the participant's account balance over their life expectancy. Under the new rule, designated beneficiaries must receive a complete distribution of the participant's account by the end of the tenth calendar year following the year of the participant's death, with certain exceptions described below. Importantly, governmental plans have a delayed effective date, so the new rules apply only to beneficiary distributions due to the participant's death after December 31, 2021.

An exception to the new 10-year rule is made for an eligible designated beneficiary (EDB), including a beneficiary who is the surviving spouse, disabled, chronically ill, not more than 10 years younger than the participant or a child of the participant who has not attained the age of majority. EDBs can continue to take the death benefit over their life expectancy, without regard to the prior rules, which depended upon whether the participant died before or after beginning to take RMDs. When an EDB taking a life-expectancy payout dies, the new 10-year rule applies to their beneficiary's receipt of the remaining account balance.

It appears that non-designated beneficiaries, including estates, charities and non-look-through trusts, remain subject to the prior rules. Such non-designated beneficiaries can continue to use the "at least as rapidly rule" and remain subject to the five-year rule.

Substantive guidance needed from the IRS on post-death distributions: Empower has worked with our industry partners on comment letters to the IRS requesting additional guidance, including:

- What is the age of majority for purposes of this provision?
- How do the changes impact existing regulations (e.g., look-through trust rules)?

Withdrawals for birth or adoption (baby withdrawals) — Optional

The SECURE Act permits penalty-free withdrawals of up to \$5,000 from eligible defined contribution retirement plans, including governmental 457(b) plans, if the withdrawal is made during a one-year period beginning on the date of the birth of the participant's child or on the date the participant finalizes an adoption (excluding the adoption of the child of the participant's spouse). This provision creates a new exception to the 10% premature withdrawal penalty tax under Code §72(t). Importantly, a baby withdrawal is not subject to mandatory 20% income tax withholding. The SECURE Act also allows the participant to recontribute such "qualified birth or adoption distributions." This provision is effective for baby withdrawals made after December 31, 2019.

Substantive guidance needed from the IRS on baby withdrawals: Empower, along with our industry partners, has written to the IRS requesting additional guidance on this provision, including:

- Is there any type of reporting required of the plan?
- Is any documentation required for the plan to process the withdrawal without 20% withholding and to report it as an exception to the 10% premature withdrawal penalty?
- Can a plan impose a recontribution deadline?
- What happens if the participant is no longer working for the employer when they want to recontribute the amount?
- Must plans confirm a baby withdrawal has not been made from any other plans or IRAs? If so, what administrative steps would a sponsor need to take?

In-service distributions at age 59½ — Optional

The FCAA allows in-service distributions under a pension plan or governmental 457(b) plan at age 59½ (rather than age 62, as previously permitted for pension plans, or age 70½, as previously permitted for 457(b) plans). This provision is not part of the SECURE Act but was included in FCAA as part of the Bipartisan American Miners Act. This is an optional provision and is effective for plan years beginning after December 31, 2019.

Portability of lifetime income options — Optional

If a retirement plan offers a lifetime income investment, and that option is eliminated under the plan, the SECURE Act treats such termination as a distributable event for participants in the lifetime income investment. Participants can (1) make a direct trustee-to-trustee transfer of those funds into a lifetime income investment in another employer-sponsored retirement plan or to an IRA, or (2) receive a distribution of that amount in the form of a qualified plan distribution annuity. This provision is effective for plan years beginning after 2019. For Empower clients, the available lifetime income option is called SecureFoundation, and the participant would need to effect a direct trustee-to-trustee transfer into SecureFoundation within an Empower IRA.

Lifetime income disclosures — Mandatory for ERISA plans

Sponsors of plans subject to ERISA must include a lifetime income disclosure in at least one participant benefit statement issued during any 12-month period. This disclosure is required regardless of whether the plan includes a lifetime income or annuity distribution option. The purpose of the disclosure is to set forth as a lifetime income stream the equivalent of the participant's total account balance under the plan (i.e., an estimate of what the participant could receive if their benefits were paid as an annuity). The effective date for implementation of this disclosure requirement by ERISA plans is 12 months after the latest of the DOL's issuance of the interim final rules, model disclosure or assumptions, which must be issued no later than December 20, 2021.

Fiduciary safe harbor for selection of guaranteed retirement income contract — Optional

The SECURE Act provides an optional safe harbor for ERISA plan fiduciaries when selecting insurers for a guaranteed retirement income contract. While not applicable to governmental plans, this could provide a useful best practice for governmental plans. While the SECURE Act provides additional assistance to plan sponsors seeking to analyze the financial stability of the insurer in payout annuity purchases, additional DOL guidance will be needed to clarify elements of the statutory requirements.

Terminating a 403(b) plan with custodial accounts

For our public school clients, termination of a 403(b) plan involves liquidating and distributing each plan account to the owner/participant. IRS Revenue Ruling 2011-17 clarified that a plan may consider an annuity contract to be distributed (in kind) upon establishment of a fully paid individual annuity contract to the plan participant to be held until benefits can properly be distributed pursuant to 403(b) distribution requirements. The SECURE Act now provides that 403(b) custodial accounts may be distributed in kind upon plan termination by the establishment of an individual custodial account. The SECURE Act also requires the IRS to issue guidance, which shall be retroactively effective for taxable years beginning after December 31, 2008.

Repeal of maximum age for traditional IRA contributions

The maximum age for traditional IRA contributions is repealed effective for contributions made for taxable years beginning after December 31, 2019. This is an important provision for individuals with earned income who are otherwise eligible to make IRA contributions. No action is needed by employer-sponsored plans unless they offer a deemed IRA.

Please address any questions to your Empower representative, and we will respond based on information we have available at the time.

The research, views and opinions contained in these materials are intended to be educational, may not be suitable for all investors and are not tax, legal, accounting or investment advice. Readers are advised to seek their own tax, legal, accounting and investment advice from competent professionals. Information contained herein is believed to be accurate at the time of publication; however, it may be impacted by changes in the tax, legal, regulatory or investing environment.

Securities offered by GWFS Equities, Inc., Member FINRA/SIPC, marketed under the Empower brand. GWFS is affiliated with Great-West Funds, Inc.; Great-West Trust Company, LLC; and registered investment advisers Advised Assets Group, LLC and Great-West Capital Management, LLC, marketed under the Great-West Investments™ brand. This material has been prepared for informational and educational purposes only and is not intended to provide investment, legal or tax advice.

©2020 Great-West Life & Annuity Insurance Company. All rights reserved. GEN-FBK-WF-363926-0120 RO1071477-0120

FOR PLAN SPONSOR OR FINANCIAL PROFESSIONAL USE ONLY.