GLOBAL INSURANCE INDUSTRY

YEAR IN REVIEW 2019

EXCERPT

INSURANCE REGULATORY

US/NAIC

SECURE Act Signed Into Law

As a part of the Further Consolidated Appropriations Act, 2020, the Setting Every Community Up for Retirement Enhancement Act of 2019 (the "**SECURE Act**") was signed into law on December 20, 2019. The SECURE Act—the most significant legislation affecting retirement plans since the Pension Protection Act of 2006—made sweeping changes to the laws governing retirement plans and their administration, several of which will have a significant impact on the insurance industry. Those changes included:

Annuity Safe Harbor. Effective immediately, the SECURE Act provided a safe harbor that may make it easier for qualified retirement plan fiduciaries to include annuities within their plans. Specifically, the applicable fiduciary will be deemed to have satisfied ERISA's prudence standard if, at a high level, the fiduciary:

- Undertakes an objective, thorough and analytical search to identify insurers.
- Considers the insurer's financial capability and determines, at the time of selection, that the insurer is capable of satisfying its obligations under the annuity contract. Many of the financial capability requirements will be deemed satisfied if the fiduciary obtains specified written representations from the insurer.
- Considers the cost (including fees and commissions) of the annuity contract relative to its benefits, features, and services, and determines, at the time of selection, that it is reasonable. The fiduciary is <u>not</u> required to select the lowest cost annuity provider.

The SECURE Act further provides that a fiduciary who satisfies its annuity selection safe harbor requirements will not, following the distribution of a benefit or investment pursuant to an annuity, be held liable for losses due to an insurer's inability to satisfy its financial obligations under the annuity contract.

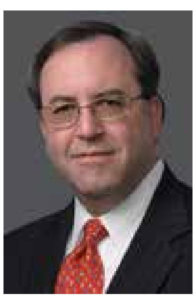
Lifetime Income Disclosure. Plan administrators will be required to include a disclosure regarding lifetime income payment streams at least annually on defined contribution plan benefit statements. Specifically, the disclosure will need to provide the participant's or beneficiary's expected monthly payment stream calculated using a single life annuity and a qualified joint and survivor annuity, assuming that the participant's or beneficiary's total accrued benefits were used to procure such annuity. This disclosure requirement will not apply until at least 12 months after the Department of Labor issues guidance, including interim final rules, a model disclosure and a defined set of assumptions.

Portability of Annuities. For plan years beginning after December 31, 2019, defined contribution retirement plans may include provisions permitting participants permitted to take a distribution of a lifetime income investment if the plan eliminates lifetime income investments as an investment option under the plan, without regard to whether the participant would otherwise be eligible to receive a distribution under the plan. Such a distribution must be made in the form of an annuity or a direct rollover to an IRA or an employer sponsored qualified retirement plan, and may be made no earlier than 90 days before the date that lifetime income investments are eliminated as an investment option under the retirement plan.

Required Minimum Distributions. The SECURE Act raises the age for required minimum distributions from age 70 ½ to age 72. This change is effective for distributions required to be made after December 31, 2019, for individuals who reach age 70 ½ after December 31, 2019.

Of course, the SECURE Act made a number of other changes that impact qualified retirement plans, plan sponsors and employers, including increasing the cap for automatic enrollments and lowering minimum service requirements to allow for participation by long-term, part-time employees. We will be monitoring developments closely as the Internal Revenue Service and Department of Labor begin issuing regulations implementing the SECURE Act's provisions.

Authors



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