SECURE Act

Answers to frequently asked plan sponsor questions

The SECURE Act is the most significant piece of retirement legislation since the Pension Protection Act of 2006. The Act contains 30 provisions designed to help modernize the retirement system and recognizes the importance of lifetime income as a key driver of overall financial confidence and retirement readiness.

These changes present an opportunity to review your client's retirement plan objectives and design to ensure their participants have access to lifetime income options and savings solutions that meet their needs. To learn more about the provisions, their impacts and effective dates, and things you and your client should consider, please go to **www.tiaa.org/public/consultants/secureact**.

Below are answers to questions we have received from plan sponsors to help clarify how the SECURE Act impacts their retirement plans and participants. If you have additional questions about how the SECURE Act will impact your client's retirement plan and their participants, please contact your TIAA Consultant Relations Director.

GUARANTEE GAP

SECURE Act Section 204—Improves safe harbor for annuity provider selection

1 Can you clarify the disclosure referenced for the section 204 safe harbor?

Under ERISA, a fiduciary is required to discharge its duties with respect to a plan solely in the interest of participants. Fiduciaries must act with the care, skill, prudence and diligence under the circumstances that a reasonable prudent person acting under similar circumstances would use. This is called the prudent person requirement.

SECURE Act, Section 204 adds a fiduciary safe harbor that deems a fiduciary to satisfy the prudent person requirement when selecting an annuity provider.

The fiduciary safe harbor:

- Allows defined contribution plan fiduciaries to rely on written representations from insurers regarding their status under state insurance law for purposes of considering the insurers' financial capabilities;
- Specifies that a fiduciary is not required to select the lowest-cost contract but may also consider the value provided by other features and benefits and attributes of the insurer;
- Clarifies that fiduciaries are not required to review the appropriateness of a selection after the purchase of a contract for a participant or beneficiary; and
- Deems fiduciaries to have conducted a periodic review if the fiduciary obtains certain written representations from the insurer on an annual basis.

Specifically, with respect to the selection of an insurer for a guaranteed retirement income contract, a fiduciary will be deemed to satisfy their fiduciary obligations if the fiduciary—

1. Engages in an objective, thorough, and analytical search for the purpose of identifying insurers from which to purchase such contracts
2. Considers the financial capability of each insurer to satisfy its obligations under the guaranteed retirement income contract
3. Considers the cost (including fees and commissions) of the guaranteed retirement income contract offered by the insurer in relation to the benefits and product features of the contract and administrative services to be provided under such contract

On the basis of such consideration, the fiduciary concludes that—

4. At the time of the selection, the insurer is financially capable of satisfying its obligations under the guaranteed retirement income contract; and
5. The relative cost of the selected guaranteed retirement income contract is reasonable.

A fiduciary will be deemed to satisfy the requirements of (2) and (4) above if the fiduciary obtains written representations from the insurer that—

- The insurer is licensed to offer guaranteed retirement income contracts;
- The insurer, at the time of selection and for each of the immediately preceding seven plan years, the insurer:
  - Operates under a certificate of authority from the insurance commissioner of its domiciliary State which has not been revoked or suspended;
  - Has filed audited financial statements in accordance with the laws of its domiciliary State under applicable statutory accounting principles;
  - Maintains (and has maintained) reserves which satisfies all the statutory requirements of all States where the insurer does business; and
  - Is not operating under an order of supervision, rehabilitation or liquidation;
- The insurer undergoes, at least every five years, a financial examination by the insurance commissioner of the domiciliary State (or representative, designee or other party approved by such commissioner); and
- The insurer will notify the fiduciary of any change in circumstances occurring after the provision of its representations which would preclude the insurer from making such representations at the time of issuance of the guaranteed retirement income contract; and

After receiving such representations and as of the time of selection, the fiduciary has not received any notice and is in possession of no other information which would cause the fiduciary to question the insurer's representations.

Note: TIAA as a provider meets the requirements for annuity provider selection and our written representation is available on PlanFocus.

SECURE Act Section 203–Requires lifetime income disclosures on benefit statements

1 Do non-ERISA entities need to include disclosures on benefit statements?

SECURE Act, Section 203 requires participant benefit statements to include a lifetime income disclosure only for defined contribution plans subject to the Employee Retirement Income Security Act of 1974, as amended (ERISA). Non-ERISA plans may, but are not required to, include a lifetime income disclosure on participant benefit statements.

Note: TIAA has been providing lifetime income estimates to plan participants for decades.

SECURE Act Section 109–Enhances portability of in-plan annuities

1 How can portability of annuities be administered/managed?

SECURE Act, Section 109 allows participants in qualified defined contribution plans, 403(b) plans, and governmental 457(b) plans to take a distribution of a lifetime income investment without regard to any of the federal tax code's withdrawal restrictions only if all of the following conditions are met:

- The lifetime income investment is no longer authorized to be held under the plan;
- The plan permits the distribution; and
- The distribution is made via a direct rollover to an IRA or other retirement plan or, in the case of an annuity contract, through direct distribution to the individual.

Guidance is needed both from the Internal Revenue Service and each State department of insurance to determine how distribution of a group annuity contract to individual participants could work.

Please note, SECURE Act, Section 109 does not apply to participant owned or driven annuity contracts such as TIAA Legacy annuity contracts (e.g., RA, SRA, GRA and GSRA contract). A plan sponsor cannot unilaterally liquidate a participant owned or driven annuity contract. As such, participant owned or driven annuity contracts are still 'held by the plan' for SECURE Act, Section 109 purposes even if frozen to new contributions. Therefore, SECURE Act, Section 109 does not apply to participant owned or driven annuity contracts.

SAVINGS GAP

SECURE Act, Section 114–Increased Age for Required Minimum Distributions

IMPORTANT: The Coronavirus Aid, Relief and Economic Security (CARES) Act made some important changes to the Required Minimum Distribution (RMD) rules.

RMDs may be suspended for 2020, allowing opportunity to recoup any market loss and savings to build back up. As a result, TIAA will implement the following rules:

- Recurring RMDs will not be suspended for the year, unless the participant directs us otherwise
- Annual RMDs will be suspended in early May
- If 2020 was the first year for an RMD, the participant may be required to take two distributions in 2021
- Participants can repay an RMD already taken in 2020 as a rollover contribution

If there is anything we can do for you or your employees, please reach out to your relationship manager or the Administrator Telephone Center (ATC) at **888-842-7782**, weekdays, 8 a.m. to 8 p.m. (ET).

1 Has there been any indication from the IRS regarding guidance for those who are between 70½ and 72 as of January 1, 2020, and actively employed? Is there any chance that they would be considered an exception to have RMD start at 72, when they terminate or still immediately at termination even if under age 72?

The IRS has not issued guidance on SECURE Act, Section 114–Increased Age for Required Minimum Distributions. However, the IRS may not have the legal authority to make an exception to the required minimum distribution rules for an individual who attained age 70½ in 2019 or before. The IRS is bound by the terms of the SECURE Act which amended federal statute. Therefore, absent guidance to the contrary, a participant is required to take minimum distributions as follows.

Participant's age in 2019	Which rule applies?
Age 71 or older	Old rule applies. Participant must take a RMD by December 31 each year.
Age 70½ and retired	Old rule applies. Participant must take an initial RMD by April 1, 2020, and an additional RMD by December 31, 2020. Participant must take a RMD by December 31 each year thereafter.
Age 70½ or older, but still employed with plan sponsor	Old rule applies. Participant must take initial RMD by April 1 of the calendar year following the year in which they retire, and an additional RMD by December 31 of that year. Participant must take a RMD by December 31 each year thereafter.
Less than age 70½	New rule applies. Participant must take initial RMD by April 1 of the calendar year following the year in which they reached age 72 or retired, if later, an additional RMD by December 31 of that year. Participant must take a RMD by December 31 each year thereafter.

2 Can you clarify if the new RMD rule is age 72 or April 1 of the calendar year following the calendar year of retirement or age 72, if later?

SECURE Act, Section 114 increases the required beginning date from age 70½ to age 72 for individuals born on or after July 1, 1949.

For employer-sponsored plans (i.e., 401(k), 401(a), 403(b) and 457(b) plans), a participant's required beginning date is generally April 1 following the later of the calendar year in which they (1) retire or (2) reach age 70½ (or age 72 if born on or after July 1, 1949).

Please note, a plan may require a participant to begin taking minimum distributions by April 1 following the calendar year in which they reach age 70½ (or age 72 if born on or after July 1, 1949) regardless of employment status. Please review the terms and conditions of the plan document.

This change applies to distributions required to be made after December 31, 2019, with respect to individuals who attain age 70½ after such date.

3 If the Age 72 RMD is mandatory, does this require amendments to Plan Documents? If so, can it be a single page amendment? Or why not part of the current volume submitter Plan Adoption agreement?

SECURE Act, Section 114 is mandatory. TIAA will provide plan amendments for our volume submitter plans. However, the SECURE Act provides that plan amendments are not due until the first plan year beginning on or after January 1, 2022 (or such later date as the Secretary of the Treasury may prescribe). TIAA anticipates additional guidance on specific provisions of the SECURE Act which may cause the amendment deadline to be further delayed by the Internal Revenue Service.

4 Is there a different effective date for the new RMD age for 403(b) plans?

SECURE Act, Section 114 increases the required beginning date from age 70½ to age 72 for individuals born on or after July 1, 1949, for all employer-sponsored retirement plans (including 403(b) plans) and IRAs subject to 26 U.S. Code § 401(a)(9).

Impact to 457(b) Plans

1 How do the new RMD provisions impact private 457(b) plan elections?

A 457(b) plan sponsored by a non-governmental, tax-exempt entity is subject to the required minimum distribution rules of 26 U.S. Code § 401(a)(9). As such, SECURE Act, Section 114–Increased Age for Required Minimum Distributions and (Section 401–Stretch RMD Rules, see page 7) directly apply to private 457(b) plans.

SECURE Act, Section 114–Increased Age for Required Minimum Distributions

The federal tax code requires private 457(b) plan participants to take a distribution each year starting on the participant required beginning date. For employer-sponsored plans (including a private 457(b) plan), the participants' required beginning date is April 1 following the later of the calendar year in which they (1) retire or (2) reach age 70½.

SECURE Act, Section 114 increases the required beginning date from age 70½ to age 72 for individuals born on or after July 1, 1949. Individuals who turned age 70½ in 2019 or before are subject to the age 70½ required beginning date rules.

Therefore, if a participant's initial deferral election was to defer distribution to age 70½ without reference to the required beginning date in 26 U.S. Code § 401(a)(9), a second election (if permitted under the terms of the plan) may be required in order to defer to age 72.

This change applies to distributions required to be made after December 31, 2019, with respect to individuals who attain age 70½ after such date.

2 How about a participant in a private 457(b) plan that previously made a one-time deferral election to RMD age of 70½ but will be 70½ after 2019? Does this new rule allow for a change in their election to defer to 72 now? Is this capability governed by the plan document and whether a second deferral is permitted by the terms of the plan document?

The federal tax code requires private 457(b) plan participants to take a distribution each year starting on the participant required beginning date. For employer-sponsored plans (including a private 457(b) plan), the participants' required beginning date is April 1 following the later of the calendar year in which they (1) retire or (2) reach age 70½.

SECURE Act, Section 114 increases the required beginning date from age 70½ to age 72 for individuals born on or after July 1, 1949. Individuals who turned age 70½ in 2019 or before are subject to the age 70½ required beginning date rules.

Therefore, if a participant's initial deferral election was to defer distribution to age 70½ without reference to the required beginning date in 26 U.S. Code § 401(a)(9), a second election (if permitted under the terms of the plan) may be required in order to defer to age 72.

This change applies to distributions required to be made after December 31, 2019, with respect to individuals who attain age 70½ after such date.

3 What if a government employee with a 457(b) plan turned age 70½ in 2019 but works until September 2020? Does the required beginning date calculation use age 70½ or age 72?

The federal tax code requires employer-sponsored plan participants in 401(a), 401(k), 403(b) and 457(b) plans to take a distribution each year starting on the participant required beginning date. For employer-sponsored plans, the participants' required beginning date is April 1 following the later of the calendar year in which they (1) retire or (2) reach age 70½.

SECURE Act, Section 114 increases the required beginning date from age 70½ to age 72 for individuals born on or after July 1, 1949. Individuals who turned age 70½ in 2019 or before are subject to the age 70½ required beginning date rules.

This change applies to distributions required to be made after December 31, 2019, with respect to individuals who attain age 70½ after such date.

Please refer to the following chart.

Participant's age in 2019	Which rule applies?
Age 71 or older	Old rule applies. Participant must take a RMD by December 31 each year.
Age 70½ and retired	Old rule applies. Participant must take an initial RMD by April 1, 2020, and an additional RMD by December 31, 2020. Participant must take a RMD by December 31 each year thereafter.
Age 70½ or older, but still employed with plan sponsor	Old rule applies. Participant must take initial RMD by April 1 of the calendar year following the year in which they retire and an additional RMD by December 31 of that year. Participant must take a RMD by December 31 each year thereafter.
Less than age 70½	New rule applies. Participant must take initial RMD by April 1 of the calendar year following the year in which they reached age 72 or retired, if later and an additional RMD by December 31 of that year. Participant must take a RMD by December 31 each year thereafter.

4 Are participants in 403(b) and 457(b) plans required to take minimum distributions if still employed when they meet the age requirement?

Please refer to the chart above.

SECURE Act, Section 401–Stretch RMD Rules

1 Is it correct that governmental plans do not have to implement the change to the "stretch" distribution until 2021?

For collectively bargained plans and governmental plans, SECURE Act, Section 401–Stretch RMD Rules apply to deaths occurring after 2021.

2 If the beneficiary is an adult child, age 50, does the SECURE Act exempt him from the 10-year rule, or only a spouse, minor child disabled or chronically ill beneficiary, or someone who is not more than 10 years younger than I?

SECURE Act, Section 401 generally limits the amount of time a beneficiary can stretch distributions to 10 years.

Lifetime stretch distributions are still permitted for the following individuals if distributions begin within one year of the death:

- Surviving spouse
- A child under the age of majority (but 10 year rule applies once child reaches the age of majority)
- Disabled or chronically ill
- Any person who not more than 10 years younger than the participant/IRA holder

If the beneficiary is an adult child, SECURE Act, Section 401 limits the amount of time the beneficiary can stretch distributions to 10 years, unless the adult child is disabled or chronically ill.

3 What if there are two beneficiaries where one is a nondependent child and one is a chronically ill child. Does the stretch apply to only the percentage of benefit for the exception group?

SECURE ACT, Section 401–Stretch RMD Rules provides a special rule in the case of multi-beneficiary trusts for disabled or chronically ill beneficiaries. If certain requirements are met, the survivor benefit payable to a disabled or chronically ill beneficiary is applied separately from other beneficiaries who are subject to the 10-year payout rule in order to allow the disabled or chronically ill beneficiary to stretch payments beyond 10 years.

Impact to 457(b) Plans

SECURE Act, Section 401–Stretch RMD Rules

When a private 457(b) plan participant dies, beneficiaries of the account generally must begin taking distributions within a certain period of time.

Prior to the SECURE Act, beneficiaries could often take partial distributions over their lifetime (this is known as stretch distributions), subject to plan terms and limitations. Please note, many private 457(b) plans require an immediate payout of survivor benefits. Please review the terms and conditions of the plan document.

SECURE Act, Section 401 generally limits the amount of time a beneficiary stretch distributions to 10 years.

Lifetime stretch distributions are still permitted for the following individuals if distributions begin within one year of the death:

- Surviving spouse
- A child under the age of majority (but 10 year rule applies once child reaches the age of majority)
- Disabled or chronically ill
- Any person who not more than 10 years younger than the participant/IRA holder

These changes apply generally with respect to deaths after 2019.

SECURE Act Section 113–Permits plan withdrawals for birth or adoption

1 Does the rule apply to only births that occur after December 31, 2019?

SECURE Act, Section 113 applies to distributions made after December 31, 2019 that are taken within one (1) year of a birth or adoption.

2 Do spouses need to approve this early distribution?

If a plan's normal form of benefit is a qualified joint and survivor annuity (QJSA), distributions that are not in the form of a QJSA would require spousal consent.

3 It seems counterproductive to allow for new distributions for a birth/adoption if trying to set communities up for a successful retirement?

Although definitive guidance is needed from the Internal Revenue Service, it appears SECURE Act, Section 113–plan withdrawals for birth or adoption is a permissive plan provision. As a permissive plan provision, a plan sponsor would not be mandated to amend its plan to allow for such distributions.

4 Could an employee take $5,000 and repay a portion of it after 90 days and have it treated as a rollover?

If a distribution from a retirement plan is paid directly to a participant, the participant can deposit all or a portion of it in an IRA or a retirement plan within 60 days. Taxes will be withheld from a distribution from a retirement plan, so the participant would need to use other funds to roll over the full amount of the distribution.

The SECURE Act provides for two exceptions to the 60-day rollover rule.

SECURE Act, Section 113 adds a new distribution event for "qualified birth or adoption distributions" for employer-sponsored plans and IRAs. An amount equal to the qualified birth or adoption distribution can be repaid, without regard to the usual 60-day time limit for rollovers, to an IRA or employer-sponsored plan.

SECURE Act, Division Q, Section 202 provides tax relief for employer-sponsored plan and IRA distributions taken by individuals who have been affected by natural disasters that were declared a major disaster by the President during the period beginning on January 1, 2018 and ending on February 18, 2020. Individuals can recontribute certain distributions from a retirement plan or IRA, if such distributions were to be used to purchase or construct a principal residence in a disaster area and that principal residence was not purchased or constructed on account of the disaster. These repayments must be made by mid-June 2020 (180 days after December 20, 2019).

5 Does the employer have a choice to include the birth/adoption distribution or will employers be required to offer the provision?

Although definitive guidance is needed from the Internal Revenue Service, it appears SECURE Act, Section 113–plan withdrawals for birth or adoption is a permissive plan provision. As a permissive plan provision, a plan sponsor would not be mandated to amend its plan to allow for such distributions.

6 Why would a participant have to repay the birth/adoption withdrawal? It sounds like a loan.

For purposes of SECURE Act, Section 113–Plan Withdrawals for birth or adoption, a participant who receives a qualified birth or adoption distribution may, but is not required to, repay an amount equal to the qualified birth or adoption distribution to an IRA or employer-sponsored plan without regard to the usual 60-day time limit for rollovers.

SECURE Act, Section 202–Provides retirement plan distribution and loan relief for victims of natural disasters

1 How does the rule work?

SECURE Act Section 202 Adds loan relief to “qualified individuals” whose principal place of abode during any of the covered disasters was located in a disaster area and who sustained an economic loss by reason of the disaster.

2 Does the rule only apply to a primary residence?

SECURE Act, Division Q, Section 202 provides tax relief for employer-sponsored plan and IRA distributions taken by individuals who have been affected by natural disasters that were declared a major disaster by the President during the period beginning on January 1, 2018, and ending on February 18, 2020. Individuals can recontribute certain distributions from a retirement plan or IRA, if such distributions were to be used to purchase or construct a principal residence in a disaster area and that principal residence was not purchased or constructed on account of the disaster. These repayments must be made by mid-June 2020 (180 days after December 20, 2019).

See IRS Publication 976 for more information on general natural disaster relief.
https://www.irs.gov/pub/irs-pdf/p976.pdf

3 For what plan(s) does disaster relief apply, e.g., 403(b)?

Section 202 applies to all retirement plans.

4 When must plans be amended for natural disasters? Does this apply to both 401(k) and 403(b) plans?

SECURE Act, Division Q, Section 202 provides tax relief for employer-sponsored plan (including 403(b) plans) and IRA distributions taken by individuals who have been affected by natural disasters that were declared a major disaster by the President during the period beginning on January 1, 2018, and ending on February 18, 2020.

ACCESS GAP

SECURE ACT, Section 112 - Long-term, part-time employees applies only to 401(k) plans.

1 Does the rule apply to state pension plans? Or just private pensions?

SECURE ACT, Section 112 - Long-Term, Part-Time Employees applies only to 401(k) plans.

2 We have a 401(a) defined contribution plan. Are the same rules applicable as for 401(k) plans?

SECURE Act, Section 112 Long-Term, Part-Time Employees Rule applies only to 401(k) plans. Please note, although all 401(k) plans are technically 401(a) plans with an elective deferral feature, SECURE Act, Section 112 focuses on providing long-term, part-time employees the ability to make elective deferrals. As such, an employer is not required to make matching or non-elective contributions on behalf of such employees.

3 Is SECURE Act Section 112 section only applicable to ERISA plans?

SECURE Act Section 112–Long-Term, Part-Time Employees applies to ERISA 401(k) plans only. Governmental and non-electing church 401(k) plans are exempt from 26 U.S. Code § 401(k)(2)(D) (See 26 U.S. Code § 410(c)).

4 Do 403(b) plans keep the 1000 hours only option because the option for 500 hours over three years does not apply?

SECURE Act Section 112 Long-Term, Part-Time Employees Rule applies only to 401(k) plans.

5 Universal availability already solves this–correct?

SECURE Act Section 112 Long-Term, Part-Time Employees Rule applies only to 401(k) plans.

6 Does the long-term, part-time employee rule apply to 401(a) plans?

No. SECURE Act Section 112 Long-Term, Part-Time Employees Rule applies only to 401(k) plans.

7 Does the rule apply to 401(a) MPPs?

No. SECURE Act Section 112 Long-Term, Part-Time Employees Rule applies only to 401(k) plans.

8 Does allowing all employees to participate in a TDA plan cover the Long-Term, Part-time mandate or will the three-year, 500-hour mandate now require them to be part of the defined benefit plan as well and receive contributions from the organization?

SECURE Act, Section 112 applies only to 401(k) plans.

9 Is it compulsory that employers must make it a one-year wait time? Our plan currently has a two-year wait time for employees?

SECURE Act, Section 112 applies only to 401(k) plans. Under the federal tax code and the Employee Retirement Income Security Act (ERISA), a 401(k) plan may require an employee to accrue a year of service and/or attain age 21 before becoming eligible to participate in the plan. A plan may require two years of service, but only if employer contributions are immediately vested.

SECURE Act, Section 112 requires 401(k) plan sponsors to have a dual eligibility requirement under which an employee must complete either:

a) One (1) year of service (with the 1,000-hour rule); or

b) Three (3) consecutive years of service where the employee completes at least 500 hours of service.

The employer may elect to exclude such employees from testing under the nondiscrimination and coverage rules, and from the application of the top-heavy vesting and benefit rules.

An employer is also not required to make matching or non-elective contributions on behalf of such employees, and could continue to impose a requirement that the employee attain age 21 before participating in the plan.

10 How does the universal eligibility rule apply to a mandatory plan (i.e., a condition of employment)?

403(b) plans are subject to the Universal Availability Rule. The Universal Availability Rule is specific to employee voluntary elective deferrals only. Employee mandatory contributions are not elective deferrals. Therefore, the Universal Availability Rule does not apply to mandatory employee contributions.

11 Does being in the plan mean they receive money from the organization or that they can participate with their own money?

Participating in a plan includes an employee making elective deferral contributions to the plan.

12 Does the rule apply to long-term part-time workers in 403(b) plans?

SECURE ACT, Section 112 - Long-Term, Part-Time Employees applies only to 401(k) plans.

403(b) plans are subject to the Universal Availability Rule. Under the Universal Availability Rule, all employees of the employer (including adjunct faculty and retirees who return to work) must be eligible to make elective deferrals if any employee has the right to do so, subject to the following limited exceptions:

- Employees who normally work less than 20 hours per week ("part-time exclusion")
- Students performing services described in 26 U.S.C. § 3121(b)(10) ("student exclusion")
- Nonresident aliens described in 26 U.S.C. § 410(b)(3)(C)
- Employees who are eligible to make elective deferrals under another 401(k), 403(b) or 457(b) plan sponsored by the same employer

For the part-time and student exclusions, if any employee who falls under one of these exclusions has the right to make elective deferrals, then no employee who falls under such exclusion may be prevented from making elective deferrals ("consistency requirement").

The definition of "student" for Universal Availability Rule purposes can be found at 26 CFR § 31.3121(b)(10)-2(d). **https://www.law.cornell.edu/cfr/text/26/31.3121(b)(10)-2**

If a plan chooses to exclude employees who normally work less than 20 hours per week, it is important to look at three different periods of employment to determine if an employee (including adjunct faculty members and retirees who return to work) normally work less than 20 hours per week:

a) Initial year of employment;

b) First plan year ending after initial year of employment; and

c) Subsequent plan years thereafter.

An employee is considered to be working fewer than 20 hours per week if (1) the employer reasonably expects the employee to work less than 1,000 hours of service in the initial year of employment and (2) the employee actually works less 1,000 hours of service for each plan year following the initial year of employment. If an employee works 1,000 hours or more during any plan year, they will become eligible to make elective deferrals and must be given the opportunity to do so. Once the employee meets the 1,000 hours of service threshold, they can no longer be excluded under the "part-time exclusion," even if their hours drop to less than 1,000 in a subsequent year.

See **https://www.irs.gov/retirement-plans/403(b)-universal-availability-requirement**

13 For 403(b) plans, under the universal availability rule, participation is only for elective deferrals correct?

Please refer to question 12.

14 Are student workers excluded from the 500 hours per year?

Please refer to question 12.

15 Are part-time employees working less than 20 hours/week allowed to contribute to the 403(b) plan?

Please refer to question 12.

16 For 403(b) plans, and the universal availability rule, the participation is only for elective deferrals correct?

Please refer to question 12.

17 Does allowing all employees to participate in a TDA plan cover the long-term, part-time mandate or will the three-year, 500-hour mandate now require them to be part of the defined benefit plan as well and receive contributions from the organization?

Please refer to question 12.

18 Do adjunct faculty qualify under the universal availability rule to be able to contribute to the 403(b)?

Please refer to question 12.

19 Can a student be excluded in the 403(b) plan if it is for higher education?

Please refer to question 12.

20 Do employers still have the ability to exclude groups of employees like student workers or federal work study?

Please refer to question 12.

21 How does the universal availability rule apply to retirees who have come back to work on a part-time basis? What about a retiree who is already withdrawing funds?

Please refer to question 12.

22 Regarding part-time employees' eligibility: Our plan requires that part-time employees who work 20 hours/week are eligible for our default 403(b) plan. Are we impacted by the new rule requiring offering eligibility to those who work three straight years of at least 500 hours/year?

Please refer to question 12.

23 Under University Availability "once eligible/always eligible, do employers need to make contributions for employees who happen to work less than 1000 hours in a particular year?

Eligibility and participating rules for purposes of receiving employer contributions (e.g., matching contributions and non-elective contributions) in a 403(b) plan are generally subject to nondiscrimination rules, unless the plan is a governmental (e.g., public school) or church plan. If a plan is subject to nondiscrimination rules, excluding participants from receiving employer contributions may require annual nondiscrimination testing.

24 Under University Availability "once eligible/always eligible," do the employees need to continue to also receive the employer contribution if they are eligible based on prior hours and not currently working 20 hours/week?

Please refer to question 23.

25 Does the minimum hours requirement pertain to deferrals only, or also employer contributions? (When a part-time employee's hours drop below half-time, we typically drop the employer contribution but allow the deferral. Is this still the correct policy?)

Please refer to question 23.

26 Once a plan participant falls under the 1000 hours and cannot be dropped from the 403(b) plan, can the participant continue to contribute into the plan as a part of the defined contribution match or only as an individual contributor?

Please refer to question 23.

27 If an employee who is receiving employer contributions retires and returns part-time (under 20 hours per week) does the employer have to contribute?

Please refer to question 23.

SECURE Act, Section 402–Increased Filing Penalties

1 Section 402 applies to late filings for which type of individual fliers?

SECURE Act, Section 402–Increased Filing Penalties applies to a failure to file an individual tax return (e.g., single, married or head of household).

Prior to the SECURE Act, the penalty is generally five percent of the net amount of tax due for each month, up to a maximum of 25% of the net amount due.

If the return is filed more than 60 days after the due date, the failure to file penalty generally may not be less than the lesser of $330 or 100 percent of the amount required to be shown as tax on the return.

SECURE Act, Section 402 increases the minimum penalty to the lesser of $435 or 100 percent of the amount required to be shown as tax on the return.

The changes apply to returns due after December 31, 2019.

2 What is the impact to solo 401(k) plans?

A solo 401(k) plan is exempt from Title I of the Employee Retirement Income Security Act (ERISA) as long as the sole proprietor and their spouse (if any) are the only persons eligible to participate in the plan. If the solo 401(k) plan is exempt from ERISA, the plan is not required to file a Form 5500. If the sole proprietor hires an employee who satisfies the plan's eligibility requirements (e.g., age 21 and completion of 1,000 hours of service), the plan is subject to ERISA and SECURE Act, Section 402 will apply.

3 Can a plan sponsor now file one 5500 if you have two plans, one TDA and one defined contribution plan?

ERISA plan administrators are generally required to file an annual Form 5500 return that contains information relating to the qualification, financial condition, and operation of the plan.

SECURE Act, Section 202 permits a group of similar plans to file a single consolidated Form 5500 if all plans in the group:

- Are individual account plans or defined contribution plans;
- Have the same trustee, named fiduciary(ies), and administrator;
- Use the same plan year; and
- Provide the same investments or investment options.

Information regarding each plan for which information is provided on a consolidated Form 5500 would be treated as a separate return for purposes of determining whether the IRS may require electronic filing based on the number of returns a person files.

The ability to file consolidated Forms 5500 will be implemented no later than January 1, 2022, and will apply to returns for plan years beginning after December 31, 2021.

4 Is it true that there will no longer be an extension granted for filing a 5500?

A plan sponsor may still apply for an extension to file the annual Form 5500. SECURE Act, Section 403–failure to file Form 5500 (including any extensions thereof) generally results in a penalty of $25 a day until the Form 5500 is filed, not to exceed $15,000. The SECURE Act increases the daily penalty from $25 to $250 and the maximum penalty from $15,000 to $150,000.

ADDITIONAL INFORMATION

1 Can you provide a reference guide for 403(b) plans since the SECURE Act treats 401(k) and 403(b) plans differently in certain cases?

SECURE Act Section	Applies to ERISA, Non-ERISA or both?	Applies to which type of plans?	Mandatory or Permissive?
Section 114–Increased Required Beginning Date for Required Minimum Distributions	Both	401(a), 401(k), 403(b), 457(b) plans and IRAs (Roth IRAs are currently exempt from RMD rules)	Mandatory
Section 101–Open MEPs/Pooled Employer Plans	Both	401(a) and 401(k) plans	Permissive
Section 113–Plan Withdrawals for Birth or Adoption	Both	401(a), 401(k), 403(b), 457(b) and IRAs	Permissive, subject to future regulatory guidance
Section 102–Safe Harbor Cap on Automatic Enrollment and Escalation	Both (but only applicable to ERISA plans in practice)	401(a), 401(k) and 403(b) plans	Permissive, but cannot exceed cap to stay within safe harbor
Section 103–Safe Harbor 401(k) Plans	ERISA (governmental and non-electing church plans are exempt from nondiscrimination rules)	401(k) plans	Permissive
Section 110–Termination of 403(b) Custodial Accounts	Both	403(b) plans	Permissive, a plan sponsor could still require custodial accounts to be liquidated upon plan termination
Section 112–Long-Term/Part-Time Employees	ERISA (governmental and non-electing church plans are exempt from nondiscrimination rules)	401(k) plans	Mandatory
Section 116–Foster Care Difficulty of Care Payments	Both	401(a), 401(k) and 403(b) plans, and IRAs	Permissive, subject to future regulatory guidance
Section 202–Consolidated Form 5500 Reporting for Similar Plans	ERISA	401(a), 401(k) and 403(b) plans	Permissive
Section 403–Increased Form 5500 Filing Penalties	ERISA	401(a), 401(k) and 403(b) plans	Mandatory

2 My employer has a 403(b) plan. Do we need to have an independent review of the plan?

TIAA cannot provide legal or tax advice. We recommend you consult with legal counsel to review the inquiry. If your plan is subject to the Employee Retirement Income Security Act (ERISA), you may need to have an independent audit of your plan in order to file an "Accountant's Report" with the Form 5500, Annual Return/Report of Employee Benefit Plan.

3 Is there any other pension legislation we should know about?

The Retirement Security & Savings Act (Senators Rob Portman (R-OH) and Ben Cardin (D-MD)) and the Retirement Plan Simplification & Enhancement Act (Congressman Richie Neal (D-MA)) are examples of legislation which may gain momentum in 2020. The proposals would provide for:

- Enhanced automatic enrollment/escalation features
- Increased employer sponsored retirement plan and IRA catch-up contribution limits
- Assistance with student loan debt (e.g., ability for an employer to make matching contributions to the employer sponsored retirement plan based on an employee's student loan repayment)
- Additional changes to the required minimum distribution rules
- Providing greater access to lifetime income options
- Simplifying employer sponsored retirement plan rules

How TIAA Helps Plan Sponsors

Plan Documents

1 If your client uses TIAA's volume submitter format for their plan documents. Will TIAA automatically make the necessary changes to their plan documents, for example, RMD, or do they need to take some kind of action?

If your client uses a TIAA volume submitter plan document, TIAA will provide plan amendments for our volume submitter plans. However, the SECURE Act provides that plan amendments are not due until the first plan year beginning on or after January 1, 2022 (or such later date as the Secretary of the Treasury may prescribe). TIAA anticipates additional guidance on specific provisions of the SECURE Act which may cause the amendment deadline to be further delayed by the Internal Revenue Service.

2 Will TIAA be contacting plan sponsors about what plan amendments are needed?

Your client should contact their TIAA representative with any questions. Please note, if your client utilizes TIAA volume submitter plan document services, TIAA will provide plan amendments for our volume submitter plans. However, the SECURE Act provides that plan amendments are not due until the first plan year beginning on or after January 1, 2022 (or such later date as the Secretary of the Treasury may prescribe). TIAA anticipates additional guidance on specific provisions of the SECURE Act which may cause the amendment deadline to be further delayed by the Internal Revenue Service.

Communications for Participants

Your clients can educate their participants on the SECURE Act and how it can help build their confidence about retirement. We have created some simple resources they can use and share with their participants to help them understand how the act impacts their financial plans. They highlight key elements and provide additional links to helpful information.

Participant article
Participant letter

TIAA and the SECURE Act

TIAA is a proud leader in driving retirement reform legislation and is excited to see more American workers enabled to be retirement ready. We remain committed to working with policymakers on further improvements to American retirement and financial security today and into the future. We hope this information helps you and your clients when considering specific retirement plan and various plan design options.

TIAA