HOW THE SECURE ACT IS CHANGING RETIREMENT

ON DECEMBER 20, 2019, THE SETTING EVERY COMMUNITY UP FOR RETIREMENT ENHANCEMENT (SECURE) ACT WAS SIGNED INTO LAW. The SECURE Act represents some of the most significant changes to retirement plan law since the passage of the Pension Protection Act of 2006, over thirteen years ago. The provisions of the Act are broad ranging and span many different effective dates.

FINANCIAL HELP FOR PLAN SPONSORS

Though tax credits have been in place to help offset the cost of adopting a new retirement plan, the SECURE Act significantly expands the tax credit for employers. Prior to the SECURE Act, employers were allowed a tax credit of the lesser of 50% of expenses or $500 per year for the first three years. Under SECURE, the amount of the tax credit is now raised to the lesser of 50% of expenses or $250 times the number of non-highly compensated employees eligible to a maximum of $5,000. Additionally, if the new plan enrolls employees into the plan using an automatic enrollment provision, the employer will get an additional annual credit for start-up costs of $500 per year. This credit is also available to existing plans that convert to an automatic enrollment design and the new credits apply to the first 3 years. These changes are effective for taxable years beginning after December 31, 2019.

SECURE provides for a new type of Multiple Employer Plan (MEP) called a Pooled Employer Plan (PEP). PEPs are intended to help smaller employers pool together to participate in a single plan and save on administrative costs. Though a PEP may have many participating employers, it has a single plan document, files a single Form 5500 and undergoes a single plan audit. A PEP is a way for small plans to combine their assets into a larger pool giving them more buying power and hopefully lower expense ratios for their participants. MEPs have existed for some time and a PEP is a type of MEP called an "open MEP." Traditional MEPs, or closed MEPs, required that the adopting employers must share a common organizational relationship (for example, a dental association might sponsor a MEP for its members or a Professional Employment Organization for its clients). In addition to creating PEPs, SECURE also created relief from the "one bad apple" rule that was the major deterrent for participating in a MEP. The one bad apple rule simply meant that if one adopting employer within the MEP had a compliance failure, all participating employers in the MEP would be painted with the same brush. SECURE created a remedy for the one bad apple rule, making MEPs and PEPs a more desirable plan design.

A PEP must be sponsored by a Pooled Plan Provider (PPP), which is likely to be a financial services company, third-party administrator, insurance company, recordkeeper, or similar entity. The PPP must serve as the ERISA section 3(16) plan administrator, as well as the named fiduciary for the plan. It is expected that the vast majority of PEPs will retain an ERISA section 3(38) investment advisor who would be responsible for selecting and monitoring the plan's investment menu. Consequently, the participating employers would only have fiduciary responsibility for prudently selecting and monitoring the PPP. This is expected to be very appealing to smaller employers who are concerned