

## CLIENT BULLETIN

### ***Budget Bill Repeals “Cadillac Tax”, Reinstates PCORI Fee, Raises MRD to Age 72, Rescues UMWA Pension and Health Plans, Increases Penalties for 5500 and Other Filings***

On December 20, 2019, the President signed into law the 715 page [Further Consolidated Appropriations Act, 2020](#) (Pub. L. No. 116-94) (FCAA, 2020), which includes the *Setting Every Community Up for Retirement Enhancement Act*, known as the *SECURE Act*. The new law is divided into seventeen “Divisions”, labeled A-Q. We will look at the following major changes in portions of the law, which are most relevant to retirement and health plans, as found in Divisions M, N and O.

Division	Title
M	Bipartisan American Miners
N	Health and Human Services Extenders
O	Setting Every Community Up for Retirement Enhancement (SECURE)

#### **When Plans Must be Amended for the Changes Made by the FCAA, 2020**

FCAA, 2020 Division O, known as the “SECURE Act,” is the only part that has a specific deadline for required plan amendments. Section 601 of the SECURE Act (page 648) contains the rules for determining any required amendment compliance dates.

Under Section 601, if the plan is in [operational compliance](#) and the *required* amendment is retroactively effective to the date the legislative change is in effect, the deadline for such required amendments is the end of the first plan year beginning on or after January 1, 2024 for collectively bargained plans.

Generally, *optional or discretionary* changes (such as the change in the age for in-service distributions) are required to be adopted by the end of the plan year in which the plan amendment is operationally put into effect (see [Revenue Procedure 2016-37](#), at Section 5). Otherwise, the timing of remedial amendments is discussed in more detail at this [IRS webpage](#).

## **Division M – Bipartisan American Miners**

---

### Additional Funding for 1974 UMWA Plans

Division M (beginning on page 558), at Sections 101-103, contains the *Bipartisan American Miners Act of 2019*, which provides additional funding for the 1974 UMWA pension and health plans by increasing the amount of monies transferred under the *Service Mining Control and Reclamation Act of 1977*. We do not discuss these details here since they pertain to just one plan. We may discuss it in a future newsletter.

### Decrease in the In-Service Distribution Age (Optional)

Section 104 is applicable to all qualified plans and changes the age for which *in-service distributions* under Code 401(a)(36) may be made from age 62 to age 59½. **This is an optional change.** This section applies to plan years beginning after December 31, 2019. This change allows for individuals to continue working and begin receiving distributions from their DB or DC plan without having to “retire”, if their plan so allows. The original addition of age 62 in-service distributions was in the context of a “bona fide retirement program” (phased retirement) in proposed regulations that were never finalized due to passage of the *Pension Protection Act of 2006 (PPA)*. That proposed requirement was dropped to reflect the *PPA* change to allow plans to be amended to permit in-service distributions in general at the plan sponsor’s discretion without the requirement of a phased retirement program. In-service distributions are not generally found in multiemployer plans

## **Division N - Health and Human Services Extenders**

---

Although plan amendments are not required for the following changes, it is mandatory for plans to be compliant with the PCORI Fee changes.

### Extends PCORI Fee

Division N, at Section 104 (page 564), extends the Patient-Centered Outcomes Research Institute (PCORI) fee for ten years. Before the change, the fee applied to health plans for plan years ending on or after October 1, 2012, and before October 1, 2019. Now, the fee will apply to plan years ending before October 1, 2029. We will report further when the new rates are published. For more on the PCORI fee, see the IRS PCORI fee webpage at: <https://www.irs.gov/newsroom/patient-centered-outcomes-research-institute-fee>.

### Repeals Cadillac Tax

Division N, at Sections 501-503 (beginning on page 558), repeals the medical device excise tax, the health insurance tax and the excise tax on high cost employer-sponsored health coverage (“Cadillac tax”). Prior to the repeal, the Cadillac tax had been delayed until 2022. The repeal is effective for taxable years beginning after December 31, 2019. See [Client Bulletin 2018-06](#) for more on the tax and the prior delays.

### **Division O – SECURE Act**

Division O contains the *SECURE Act*, which, among other things, makes the following changes to the law:

#### **Penalty Free Distributions in Case of Birth of Child or Adoption (Optional)**

Section 113 (page 621) allows penalty-free distributions from retirement plans (except for defined benefit plans) for individuals in case of birth of child or adoption of up to \$5,000 during the 1-year period beginning on the date on which a child of the individual is born or on which the legal adoption by the individual of an eligible adoptee is finalized. This optional change applies to distributions made after December 31, 2019.

#### **Increase Required Beginning Date (RBD) Age (Optional)**

Section 114 (page 623) increases the RBD for mandatory distributions from age 70½ to 72. The optional change applies to *collectively bargained plans* to distributions with respect to employees who die in calendar years beginning after the *earlier of*: (1) the date of expiration of CBAs in place as of December 20, 2019 or (2) December 31, 2021. Non-CBA plans have a different applicability date.

Since the RBD for distributions falls on the April 1 following the calendar year in which a participant attains the specified age (70½ or 72) there will be no RBDs in 2021! See table below:

<b>Date of Birth</b>		<b>RBD</b>
<b>From:</b>	<b>To:</b>	
7/1/1948	6/30/1949	4/1/2020
7/1/1949	12/31/1949	4/1/2022
1/1/1950	12/31/1950	4/1/2023
1/1/1951	12/31/1951	4/1/2024

#### **DC Statement to Include Lifetime Income Projection (Mandatory Disclosure)**

Section 203 (page 630) adds a required "disclosure" applicable to individual account plans regarding the "*lifetime income stream equivalent of the total benefits accrued.*" This term means the amount of monthly payments the participant or beneficiary would receive if the total accrued benefits of such participant or beneficiary were used to provide lifetime income streams based on assumptions specified in rules prescribed by the Secretary. Within one year of passage, the Secretary of Labor will provide a model lifetime disclosure form and rules on assumptions used to calculate a lifetime income stream. The disclosure rules will apply to pension benefit statements furnished more than **12 months after the latest of** the following issued by the Secretary:

- interim final rules;
- model disclosure form; or
- assumptions

### DC Plan Non-Spouse Distributions Generally Within Ten Years (Mandatory Change)

Section 401 (page 643) changes the minimum distribution rules under Code 401(a)(9) for defined contribution plans where the participant dies before the distribution of the participant's entire interest. In such cases, distribution of the participant's interest are required to be completed within ten years of the death of the participant. There is an exception to the requirement that allows "Eligible Designated Beneficiaries" to receive their distributions over their lifetime (instead of ten years). Such individuals include a surviving spouse, children who have not reached the age of majority, disabled or chronically ill individuals and individuals who are not more than ten years younger than the participant.

### Increased Penalty for Failure to File Form 5500

Section 402 (page 646) increases the penalty for failure to file the Form 5500. The change applies to filings required to be made after December 31, 2019.

### Increased Penalty for Failure to File Form 8955-SSA

Section 403 (page 647) increases the penalty for failure to file retirement plan returns (IRS [Form 8955-SSA](#)). The change applies to filings required to be made after December 31, 2019.

### ***Division P - ERISA Mystery Item***

Tucked into Division P, Sections 1301-1302 (beginning on page 671), is a somewhat opaque item providing temporary relief (5 years) from *ERISA* prohibited transaction rules for transactions involving the provision of pharmacy benefit services.

### ***Action Items***

The following are some suggested action items:

- Health plans: celebrate the demise of the Cadillac tax, then review the relevant changes and prepare for any necessary plan amendments or changes to plan forms and practices, such as continuing to file the PCORI fee.
- Pension plans: Although the use of age 72 for a Required Beginning Date (RBD) is now allowable, plans could still use the prior age 70½ date, be in compliance and no plan amendment would be required. However, presumably most plans will change to age 72. However, plans that change their RBDs to age 72 will need to prepare an amendment to the plan, send an SMM to participants and document any associated changes in their administrative procedures.
- Defined contribution/annuity plans: in addition to addressing the RBD change available for pension plans (see above), plans should evaluate the pros and cons of amending the plan to allow for penalty-free distributions in case of birth or adoption of a child and should consider what will be needed to provide lifetime projections on statements.

We will take a closer look at these changes as guidance is issued by CMS, the IRS or the DOL.

\* \* \*

**LEGAL DISCLAIMER:** Information contained in this publication is not legal advice, and should not be construed as legal advice. If you need legal advice upon which you can rely, you should seek a legal opinion from your attorney.