Putting Retirement Plans in the Spotlight:

What the SECURE Act Can Mean for Plan Sponsors

While there's been no shortage of things to read about in the news these days, the bipartisan-supported Setting Every Community Up for Retirement Enhancement (SECURE) Act has been signed into law and it's arguably the most impactful retirement plan security legislation in decades. For companies without a retirement plan, this will not only make plans more accessible and affordable, but also should ultimately bridge the huge savings gap by encouraging more Americans to contribute. Additionally, for companies that do offer a retirement plan, there are some noteworthy provisions that will affect plan administration, with the intent of better supporting employees.

For those wondering which of the hundreds of pages of legislation are most relevant to plan sponsors, here are some thoughts:

1. **Tax incentives for small business owners to offer a 401(k)**
For businesses offering a first-time plan, a tax credit of up to $5,000 should serve as a great catalyst. There's also an additional $500 tax credit for plans that include automatic enrollment. This can help offset any upfront costs that may have prevented a company from getting started.

2. **Increasing fees for late or missing Form 5500s**
While there have always been hefty penalties for mishandling of 5500s, the fee has increased significantly from a maximum of $50,000 to $150,000. This is an important note for sponsors, but also for the named Plan Administrator who may be ultimately responsible for timely filing the Form 5500.

3. **Allowing for open Multiple Employer Plans ("MEPs")**
A MEP gives companies the ability to offer pooled plans, typically at discounted pricing. What's new in the SECURE Act is that companies no longer need a commonality in order to join a MEP (now referred to as an "Open" MEP). That being said, it's important to be aware of certain restrictions of MEPs including the standardization of investment options, fiduciary oversight of service providers, plan features like matches, and distributed liabilities. While a MEP could be the right option, it's worth comparing whether a MEP-like experience—in which one creates their own pooled offering without the confines of a MEP — could make even more sense.

4. **Access to annuities in retirement plans**
More relaxed rules around lifetime income products means more varied offerings for participants. There is also a Safe Harbor for annuities which protects the sponsor from liability. However, there is still a lot to figure out here given the complexity of annuities, so while this provision goes into effect January 1, 2020, we anticipate it taking longer to get off the ground.

5. **403(b) plan changes**
The Act includes a provision that allows sponsors to distribute assets from a 403(b)(7) custodial account. It also gives ministers and employees of tax-exempt plans the ability to participant in 403(b)(9) church plans.

6. Provisions to better support employees

There are a number of provisions intended to support today's modernized work environment and the multitude of life distractions that can prevent people from saving.

- Portability of lifetime income options: If a plan terminates, employees can now preserve the tax-qualified status of a collective investment trust, annuity, or mutual fund by rolling them over into an IRA or otherwise.
- Protection for parental leave/part-timers: Employees who work 500 or more hours during any consecutive three-year period can participate in their plan, thus eliminating a previous penalization for those taking a leave or working flexible hours. These provisions won't be effective until 2021.
- Extended RMD age: The age at which employees must begin withdrawing from their retirement plan has been changed from 70 ½ to 72.
- Change to 529 college savings plans: 529 plans can now be used for apprenticeships and other non-college/university activities.
- Penalty-free withdrawals for the birth/adoption of a child: Parents can withdraw up to $5,000 from their retirement plan without penalty for the birth or adoption of a child. They can also pay back that money without time constraints
- The bill is quite far-reaching and includes other benefits such as those geared toward firefighters, newspaper employees, and other categories of workers.
- For those already offering a plan, it's important to communicate any changes to participants. For those considering a new plan, these measures should be taken into consideration when identifying the appropriate plan design.

Of course, there is much more to the SECURE Act, but by better understanding the imminent changes affecting retirement plans, the impact of the law becomes more clear. It's important for plan sponsors to think about the implications—good and bad—for them and their employees and to make informed decisions that will ultimately serve them both well.