CONNER & WINTERS

SUMMARY OF RETIREMENT PLAN CHANGES IN THE SECURE ACT AND OTHER YEAR-END LEGISLATION

On December 20, 2019, President Trump signed into law the Further Consolidated Appropriations Act, 2020 (the "2020 Spending Bill"). Components of the 2020 Spending Bill, including the Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE Act"), the Bipartisan American Miners Act of 2019, and the Taxpayer Certainty and Disaster Tax Relief Act of 2019, include changes to the Internal Revenue Code (the "Code") and the Employee Retirement Income Security Act ("ERISA") that impact retirement plans. The following is a brief summary of the legislative changes and should not be construed as legal advice to address particular situations.

Provision	Effective Date
Required Beginning Date: The age at which required minimum distributions are required to begin has increased from 70½ to 72. This change does not apply to qualified charitable distributions from IRAs, nor does it apply for purposes of required actuarial increases in a defined benefit plan for active service after reaching age 70½.	Distributions required to be made after December 31, 2019 to individuals who attain age 70½ after December 31, 2019.
Required Distributions for Designated Beneficiaries: IRAs and defined contribution plans are subject to required minimum distribution rules for distributions to designated beneficiaries after the death of the IRA owner/participant. The SECURE Act requires, with important exceptions, that these distributions be completed by the end of the 10th calendar year following the IRA owner's/participant's year of death. Exceptions apply if the designated beneficiary is a surviving spouse, disabled, chronically ill, not more than ten years younger than the IRA owner/participant, or a minor child of the IRA owner/participant. The new rule also does not apply to certain commercial annuities in effect on December 20, 2019. The 5-year rule that applies when there is no "designated beneficiary" continues to apply. This change eliminates the common planning technique referred to as the "stretch IRA."	Distributions by reason of the death of an IRA owner/participant after December 31, 2019 (December 31, 2021 for governmental plans and certain collectively bargained plans).
In-Service Distributions at Age 59½ for Pension Plans and Governmental 457(b) Plans: Defined benefit plans, money purchase pension plans and governmental 457(b) plans may now permit in-service distributions at age 59½. Previously, the minimum age for in-service distributions from these plans was 62. This change was included in the Bipartisan American Miners Act of 2019 rather than the SECURE Act. Thus, it is not clear if the amendment timing provisions of the SECURE Act (see "Period for Amending Retirement Plans" below) also apply to plan amendments implementing this change. Further guidance is needed on this point.	Plan years beginning after December 31, 2019.

Provision	Effective Date
Penalty-Free Plan Withdrawals for Birth or Adoption: A new penalty-free "qualified birth or adoption distribution" of up to $5,000 may be allowed from a qualified defined contribution plan, IRA, 403(b) plan, 403(a) plan, or governmental 457(b) plan. The distribution must be taken within one year of the birth or finalized legal adoption of a child who is under age 18 or physically or mentally incapable of self-support. The distribution would be exempt from the 10% early distribution penalty, the 20% mandatory withholding requirement, and the Code § 402(f) notice requirement. A "qualified birth or adoption distribution" can be contributed to a qualified defined contribution plan, 403(b) plan, 403(a) plan, governmental 457(b) plan or an IRA. There is no time limit on when that contribution must occur. Significant guidance is needed for plan sponsors and recordkeepers to be able to process qualified birth or adoption distributions and subsequent contributions.	Distributions made after December 31, 2019.
Special Disaster-Related Rules for Use of Retirement Funds: • "Qualified disaster distributions" up to $100,000 are not subject to the 10% penalty tax under Code § 72(t) and can be included in income ratably over a 3-year period. Such distributions can be rolled back into a qualified plan or an IRA for up to 3 years after the distribution. Such distributions can be made without regard to rules that otherwise restrict distributions and are not eligible for rollover. Applies to distributions taken on or after the first day of the incident period of a qualified disaster and before June 17, 2020. • If a hardship distribution was taken for the purchase or construction of a principal residence but was not used due to a qualified disaster, such amounts can be re-contributed. Applies to hardship distributions taken during the period beginning on the date that is 180 days before the first day of the incident period and ending on the date that is 30 days after the last day of the incident period. • The maximum loan limit for qualified individuals is increased to the lesser of (1) $100,000, or (2) the greater of 100% of the employee's present value of the nonforfeitable accrued benefit or $10,000. Applies from December 20, 2019 to June 17, 2020. A "qualified individual" is an individual whose principal place of abode is located within a qualified disaster area and who has sustained an economic loss by reason of such qualified disaster. Loan repayments for "qualified individuals" can be extended for up to 1 year (or if later, until 180 days after enactment of the Disaster Relief Act, June 17, 2020). Any subsequent loan repayments will be appropriately	The relief applies to disasters that occurred prior to December 20, 2019 and are declared major disasters during the period beginning January 1, 2018 and ending February 18, 2020. Plan amendments to implement these provisions are required on or before the last day of the first plan year beginning on or after January 1, 2020 (January 1, 2022 for governmental plans).

Provision	Effective Date
adjusted to reflect the delay in the due date and any interest that accrues during such delay. Applies to due dates occurring during the period beginning on the first day of the incident period and ending on the date that is 180 days after the last day of such incident period.	
Automatic Extension of Filing Deadlines Related to Certain Disasters: Certain deadlines for filing tax returns, paying taxes and performing certain other acts will be automatically extended by 60 days for certain individuals affected by federally declared disasters. An automatic extension also applies to the deadline for making contributions to a qualified retirement plan, completing rollovers, withdrawing excess IRA contributions and recharacterizing IRA contributions. It is not clear if this automatic extension applies for filing Forms 5500 or making required minimum distributions.	Applies to federally declared disasters declared after the date of the Disaster Relief Act, December 20, 2019.
Period for Amending Retirement Plans: The SECURE Act provides an extended period for amending plan provisions affected by the SECURE Act, known as a "remedial amendment" period, until the last day of the first plan year beginning on or after January 1, 2022. The applicable period for governmental and collectively bargained plans is the last day of the first plan year beginning on or after January 1, 2024. In addition, the SECURE Act confirms that amendments made during the remedial amendment period will not result in an impermissible "cut-back" of benefits. Exceptions: Amendments for disaster-related distributions and loans have an earlier deadline. See "Special Disaster-Related Rules for Use of Retirement Funds" above. Also, further guidance is needed regarding the amendment deadline for age 59½ in-service distributions from pension plans and governmental 457(b) plans (see "In-Service Distributions at Age 59½ for Pension Plans and Governmental 457(b) Plans" above).	December 20, 2019.
Safe Harbor 401(k) Plans: • For safe harbor plans that utilize nonelective safe harbor contributions (rather than safe harbor matching contributions), the annual safe harbor notice requirement has been eliminated. • A plan can be amended to become a nonelective safe harbor plan for a plan year (1) any time before the 30th day before the end of the plan year; or (2) on or after the 30th day before the end of the plan year, if the amendment is made by the last day for distributing excess contributions for the plan year (the close of the following plan year), and the nonelective contribution is at least 4%.	Plan years beginning after December 31, 2019.
Automatic Enrollment: For plans that utilize the automatic enrollment safe harbor design (qualified automatic contribution arrangements, or QACAs), the maximum percentage to which an automatic deferral can be	Plan years beginning after December 31, 2019.

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increased has changed from 10% to 15%. However, for the first year of plan participation, 10% is still the maximum automatic deferral percentage.	
Long-Term Part-Time Employees: • 401(k) plans that impose a service requirement must permit participation by an employee who has worked 3 consecutive 12-month periods in which the employee completes at least 500 hours of service during each of those periods. This rule is in addition to the existing 1-year/1,000 hour rule. • An employer is not required to make nonelective or matching contributions on behalf of employees who become eligible under the new rule, even if such contributions are made to other eligible plan participants. An employer can also exclude such employees from testing under the nondiscrimination (including safe harbor), coverage and top-heavy rules. • For determining vesting in employer contributions, each 12-month period for which an employee has at least 500 hours of service must be counted as a year of service for vesting purposes in the plan. • The new rule does not apply to collectively bargained plans.	Plan years beginning after December 31, 2020, except that 12-month periods of service prior to January 1, 2021 will not be taken into account.
Increased Penalties for Failure to File Certain Retirement Plan Returns: Several penalties have been increased for failures to file certain retirement plan returns or to provide required statements. • Form 5500: The penalty for failure to file a Form 5500 is increased from $25 a day to $250 a day with the maximum penalty for any failure increased from $15,000 to $150,000. • Form 8955-SSA: The penalty for failure to file a registration statement for deferred vested participants (Form 8955-SSA) is increased from $1 to $10 a day for each plan participant with respect to whom the failure applies with the maximum penalty imposed for a plan year increased from $5,000 to $50,000. Failures with respect to reporting changes in status of plan participants on the Form 8955-SSA are also increased from $1 to $10 a day for each participant with respect to whom the failure applies, with the maximum penalty imposed for a plan year increased from $1,000 to $10,000. • Withholding Notice: The penalty for failure to provide required withholding notices is increased from $10 to $100 per each failure with the maximum penalty increased from $5,000 to $50,000 for	Applies to returns, statements, and notifications required to be filed, and notices required to be provided, after December 31, 2019.

Provision	Effective Date
the total combined failures by a person or entity during a calendar year.	
Plan Loan Limitations: Plans are not allowed to use credit card or similar arrangements for distribution of plan loan funds.	Loans made after December 20, 2019.
Small Employer Tax Credits for New Plans: • Employers with less than 100 employees are eligible to receive tax credits for three years equal to 50% of certain costs paid or incurred in connection with starting a retirement plan. The $500 cap on these credits has been increased to $5,000 in certain circumstances. • Employers with less than 100 employees that add an automatic enrollment feature are eligible for a new tax credit of up to $500 for each of the first three years that automatic enrollment is added to the plan.	Taxable years beginning after December 31, 2019.
Relief for Closed Defined Benefit Plan: Defined benefit pension plans that are "closed" to new hires but in which current participants continue to accrue benefits may be unable to satisfy certain nondiscrimination, coverage and participation requirements. The SECURE Act provides relief that results in satisfaction of these requirements and also provides relief for plans that are frozen or that discontinue certain benefits rights, or features.	December 20, 2019, but a plan sponsor can elect to apply the relief retroactively to plan years beginning after December 31, 2013.
Portability of Lifetime Income Options: Qualified defined contributions plans, 403(b) plans, and governmental 457(b) plans can permit participants to take distributions of a "lifetime income investment" (generally, an annuity option) when that investment is no longer an authorized investment option in the plan. The investment can be rolled over to an IRA or taken as a distribution in kind, even if there has not been a distributable event. The distribution will be allowed within 90 days prior to the date such "lifetime income investment" is no longer authorized to be held as an investment option under the plan.	Plan years beginning after December 31, 2019.
Special Rule for Difficulty of Care Payments Excluded from Gross Income: Certain "qualified foster care payments" include "difficulty of care payments" which are excluded from income. The SECURE Act permits difficulty of care payments to increase the IRA contribution nondeductible limit. For defined contribution plans, difficulty of care payments will increase compensation for 415 purposes. A plan contribution based on this increase is treated as an after-tax contribution and a plan does not fail other Code requirements by permitting such contribution.	For IRAs, effective for contributions after December 20, 2019. For defined contribution plans, effective for plan years beginning after December 31, 2015.
Fiduciary Safe Harbor for Selection of Annuities: The SECURE Act provides safe harbor guidelines for plan fiduciaries that select lifetime income options for their defined contribution plans (insured options only; annuities provided by a plan are not covered). The provision describes the	December 20, 2019.

Provision	Effective Date
required considerations for this relief, including the representations that must be obtained to confirm an insurer's financial capability. There is no requirement to select the lowest cost insurer, but the fiduciary must consider the value of the contract, its features and benefits, and the financial strength of the insurer. Fiduciaries that comply with the applicable requirements shall not be liable for losses resulting from an insurer's inability to satisfy its financial obligations.	
Deadline for Plan Adoption: An employer will be treated as having adopted a stock bonus, pension, profit-sharing, or annuity plan as of the last day of a taxable year if such plan is adopted by the due date (including extensions) for the employer's tax return of the applicable year.	Applies to plans adopted for taxable years beginning after December 31, 2019.
Increased Minimum Filing Penalties for Failure to File Tax Return or to Pay Tax: Unless reasonable cause can be shown for the failure, the minimum tax penalty for failure to file a tax return on time will not be less than the lesser of $435 or 100% of the amount required to be shown as tax on the applicable return. The $435 amount is indexed and adjusted with inflation.	Applies to returns with a due date (including extensions) after December 31, 2019.
Combined Form 5500 Reporting for Certain Plans: The Departments of Treasury and Labor are directed to modify the Form 5500 filing rules to permit consolidated reporting for defined contribution plans that have the same trustees, the same one or more named fiduciaries, the same plan administrator, the same plan years and the same investments or investment options.	The modification must be implemented not later than January 1, 2022 and shall apply to returns and reports for plan years beginning after December 31, 2021.
Lifetime Income Disclosure: Defined contribution plans subject to ERISA are required to provide a lifetime income disclosure in one benefit statement during a 12-month period. • The lifetime income disclosure must describe the amount of monthly lifetime income stream payments the participant would be eligible to receive from the plan with respect to the participant's total benefits accrued. • Within one year of the enactment of the SECURE Act (thus by December 20, 2020), the DOL is to issue a model lifetime income disclosure notice and to prescribe assumptions and rules with respect to determining the monthly payments. Plan fiduciaries, plan sponsors, and other persons will not have liability under ERISA solely by reason of actual plan benefit payments being less than past projected benefit payments.	Applies with respect to benefit statements furnished more than 12 months after the latest of the DOL's issuance of: (1) interim final rules, (2) the model disclosure notice, or (3) the assumptions to be used in projecting lifetime income.

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Termination of 403(b) Custodial Accounts: IRS and the Department of the Treasury are directed to issue guidance that will permit a Code § 403(b)(7) custodial account to be distributed in kind to a participant or beneficiary to complete the termination of the Code § 403(b)(7) custodial account arrangement. (Code § 403(b)(1) annuity contract arrangements can already be terminated through distribution of annuity contracts to participants and beneficiaries.) For the distributed custodial account to maintain its tax-deferred status, it must continue to meet the Code § 403(b) requirements in effect at the time of the distribution. IRS and Treasury are directed to issue the required guidance within 6 months of December 20, 2019.	The guidance will be retroactively effective for taxable years beginning after December 31, 2008.
Participation by Non-QCCOs in Church 403(b)(9) Retirement Income Account Arrangements: The SECURE Act clarifies that church-affiliated employers that are treated as non-qualified church-controlled organizations ("non-QCCOs") under Code § 3121(w)(3)(B) are eligible to participate in Code § 403(b)(9) church retirement income account arrangements. (Examples of non-QCCOs are church-affiliated colleges, universities, hospitals, nursing homes and retirement centers whose facilities or services are offered for sale to the general public and which normally receive more than 25% of their support from governmental sources or receipts from the performance of such services or the furnishing of such facilities.) Churches (*i.e.*, local houses of worship), qualified church-controlled organizations (any church-affiliated organization that is not a non-QCCO), and ordained, commissioned or licensed ministers (regardless of their source of compensation) are also eligible to participate in Code § 403(b)(9) arrangements.	Years beginning before, on or after December 20, 2019.
Multiple Employer Plans; Pooled Employer Plans: • Unrelated employers can participate in a multiple employer defined contribution plan that is treated as a single employer plan, provided a "pooled plan provider" is utilized to administer the plan. These plans are referred to as "pooled employer plans." Many requirements apply to pooled plan providers and the operation of pooled employer plans. • Currently, multiple employer plans are subject to a rule that the entire plan can be disqualified if one participating employer violates plan qualification rules. This is referred to as the "one bad apple" rule. The SECURE Act generally eliminates the one bad apple rule for multiple employer plans that (i) are maintained by employers that have a common interest other than having adopted the plan; or (ii) have a pooled plan provider.	Plan years beginning after December 31, 2020.
IRA Contributions Based on Non-Tuition Fellowship and Stipend Payments: IRA contributions are based on compensation included in gross income, including special rules for spouses. The SECURE Act expands the	Taxable years beginning after December 31, 2019.

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definition of compensation to include amounts paid to an individual to aid the individual's pursuit of graduate or postdoctoral study.	
Post-70 ½ IRA Contributions and Distributions to Qualified Charities: Currently, individuals who have attained age 70½ before the end of a year may not make contributions to a traditional IRA (other than certain rollover contributions). In addition, IRA owners who have attained age 70½ may direct distributions to qualified charities on a tax-free basis up to $100,000 annually. The SECURE Act removes the age 70½ limitation so that eligible persons older than age 70½ may continue to contribute to a traditional IRA. However, the exclusion for distributions to qualified charities is reduced by a formula reflecting contributions to a traditional IRA made after attaining age 70½. This provision does not apply to Roth IRAs.	Applies to IRA contributions and to distributions from IRAs to qualified charities for taxable years beginning after December 31, 2019.
PBGC Premiums for "CSEC" Plans: All plans subject to Title IV of ERISA (generally, defined benefit pension plans) pay insurance premiums to the Pension Benefit Guaranty Corporation. Currently, covered plans sponsored by cooperatives and small employer charities ("CSEC") pay the same premiums that apply to other covered plans. The SECURE Act provides relief to CSEC plans by permitting the payment of lower premium rates than apply generally, by using rules that applied before 2006.	Premiums payable for plan years beginning after December 31, 2018.
Community Newspaper Plan Funding Relief: Certain community newspaper plans can elect alternative minimum funding standards.	Plan years ending after December 31, 2017.