Kilpatrick

FEBRUARY 18, 2020

Changes to Minimum Distribution Rules

by R. Sterling Perkinson

The Secure Act is the most significant legislation affecting qualified retirement plans in more than a decade. (See our prior post summarizing key changes.) Changes to the minimum distribution rules are among the most significant changes because they impact all qualified retirement plans, including 401(k), profit sharing and defined benefit pension plans, as well as 403(b) and 457(b) plans. In addition, shortly before the enactment of the Secure Act, the IRS issued proposed regulations that would update the mortality tables used for purposes of calculating minimum distributions. These changes to the minimum distribution rules are described below.

- Increase in Age for Minimum Distributions. Participants who attain age 70-1/2 after December 31, 2019, will not be required to begin their distributions until the April 1 of the calendar year following the calendar year in which they attain age 72 (or, if later, retire, except in the case of 5%-owners). A beneficiary who is a surviving spouse of a participant who died before commencing distributions may also defer distributions until the April 1 following the date that the participant would have attained age 72.
    - *Note*: The IRS has issued transition relief for financial institutions that incorrectly notified participants who will attain age 70-1/2 in 2020 that they are subject to minimum distributions for 2020 (including by providing a Form 5498), under which the IRS will not consider these statements incorrect as long as they are corrected by April 15, 2020. The IRS also indicated that it is considering the need for guidance to address whether any correction is needed if a distribution has been made to a participant who will attain age 70-1/2 in 2020 that was treated as a minimum distribution.
- Participants who attained age 70-1/2 prior to January 1, 2020. The changes to the minimum distribution rules do not impact employees who attained age 70-1/2 before January 1, 2020. Accordingly, participants who attained age 70-1/2 in 2019 are still required to begin their distributions by April 1, 2020.
    - *Note*: The IRS has encouraged financial institutions to remind IRA owners who attained age 70-1/2 in 2019 that they are still required to take minimum distributions by April 1, 2020. Plan sponsors also should review participant communications to ensure that this is clear for participants who attained age 70-1/2 in 2019.
- Actuarial Increases. The minimum distribution rules require pension plans to actuarially increase benefits of participants who retire after age 70-1/2 and delay their commencement until retirement. The purpose of the actuarial adjustment is to compensate the participant for the value of delaying their benefits while they continue to work until their ultimate retirement. The Secure Act

did not amend the provision to increase the age for actuarial adjustments from age 70-1/2 until age 72. As a result, it appears that participants who retire after age 70-1/2 will still be entitled to an actuarial adjustment for the delay in commencement for the period between attaining age 70-1/2 and when they commence their distributions after retirement.

  - *Note*: Although the provision requiring actuarial adjustments was not amended, other changes to the minimum distribution rules result in some ambiguity in certain circumstances, particularly with respect to 5% owners and other participants who retire after age 70-1/2 but prior to age 72. If Congress does not resolve these ambiguities by a technical correction, guidance from the IRS will be needed to resolve them.

- Stretch IRAs. The Secure Act generally eliminated "stretch IRAs"—an estate planning technique in which death benefits could be paid out over the life of a younger non-spouse beneficiary. Under the Secure Act, distributions from a defined contribution plan to a beneficiary other than a surviving spouse, a minor child, a disabled or chronically ill individual, or another beneficiary not less than 10 years younger than the participant must be paid out within 10 years of the participant's death. In the case of a minor child beneficiary, the remaining benefit will be required to be paid out within 10 years of the child's reaching the age of majority.
- Changes to Mortality Tables. Apart from the Secure Act changes, the IRS has released proposed regulations that update the mortality tables that apply for purposes of calculating minimum distributions. These updated tables generally reflect longer life expectancies than under existing tables. For example, the life expectance of a 70 year old under the Single Life Table increased from 17.0 years to 18.7 years. Accordingly, the effect of the updated mortality tables would be to reduce the required minimum distribution for each year from the current rules to reflect that a benefit can be expected to be paid out over a longer lifespan.
- Plan Amendments. Amendments required by the Secure Act are generally required by the last day of the plan year beginning on or after January 1, 2022 (January 1, 2024 for governmental plans and collectively bargained plans). However, the IRS may provide for a later amendment date for some or all provisions in future guidance.