



MEMORANDUM

TO: North Carolina Supplemental Retirement Board of Trustees

FROM: Reid Chisholm, Assistant General Counsel

DATE: June 17, 2019

SUBJECT: Update on the SECURE Act

A major piece of retirement legislation, the Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE Act"), passed the U.S. House of Representatives on May 23 and was received in the Senate on June 3. The Senate is expected to take up the bill, possibly through the unanimous consent process or as an attachment to another piece of legislation. If approved by the Senate, then the SECURE Act would be sent to the President for signature. The provisions of the SECURE Act that are most relevant to the North Carolina Supplemental Retirement Plans are summarized below.

Age of required minimum distributions

The age at which required minimum distributions from 401(k), 457(b), and 403(b) plans must begin is raised from 70½ to 72. The provision applies to the surviving spouse of a participant as well. The effective date is January 1, 2020.

Maximum distribution period

The SECURE Act changes the maximum period over which distributions to a designated beneficiary may be extended following the death of the participant. A designated beneficiary is a person who is designated by the participant to receive the participant's account balance upon the participant's death. The current law allows a designated beneficiary to extend distributions over his or her life or life expectancy. However, the SECURE Act limits this extended distribution period to the newly-created category of "eligible" designated beneficiaries. An eligible designated beneficiary is a participant's spouse, participant's minor child (until the age of majority), disabled or chronically ill person, or a person who is not more than 10 years younger than the participant. For designated beneficiaries other than "eligible" ones, the maximum distribution period is now limited to 10 years. The change is effective January 1, 2022 for governmental plans.

Distributions for births and adoptions

A participant is permitted to take distributions of up to \$5,000 (across all plans of the same employer) within one year of the birth or adoption of a child. Such distributions are deemed to

meet the Code's distribution requirements for 401(k), 457(b), and 403(b) plans and are exempt from the 10% additional tax on early distributions from a 401(k) or 403(b) plan. The participant is allowed to repay the amount of the distributions to the plan from which the distributions were taken – or to another plan for which a rollover is permitted – provided that the participant is eligible to make contributions to such plan. Plans are not required to permit distributions for births and adoptions but are permitted to do so as of January 1, 2020.

Lifetime income

Although the North Carolina Supplemental Retirement Plans are not subject to ERISA, the SECURE Act makes two changes to ERISA regarding lifetime income that may provide useful guidance to the extent that the board and the department look to ERISA as a best practice.

Disclosure

ERISA's disclosure requirements are amended to include the annual disclosure of the lifetime income stream that can be expected from a participant's current balance. The lifetime income stream is reported as a monthly amount and is calculated as a joint and survivor annuity and as a single-life annuity. The new disclosure requirement is effective one year after the Department of Labor issues regulations, a model disclosure, and annuity assumptions.

Every year, the department provides a *myNC* Retirement Statement ("MRS") to all active state and local governmental employees who (1) are in one of the defined benefit pensions administered by the department; and (2) were employed for the entire year to which the MRS applies. The MRS includes an estimate of the monthly amount that could be distributed from the participant's account for 25 years following retirement. The MRS uses a projected future account balance (versus the current balance in the SECURE Act) and covers 25 years of retirement (versus life expectancy in the SECURE Act).

Addition of investment option

ERISA's fiduciary duty provisions are amended to cover the selection of lifetime income providers (insurance companies). Requirements are added for satisfying the fiduciary duty in selecting an insurance company to provide a lifetime income (annuity) investment option, including the requirements that a fiduciary (1) consider the financial strength of the insurance company; and (2) conclude that the insurance company is able to fulfill its obligation to provide the annuity. However, as a safe harbor for requirements (1) and (2), a fiduciary can obtain from an insurance company the written representations listed in the SECURE Act, which include representations regarding compliance with state insurance laws. In addition, a fiduciary is not liable for participants' losses caused by an insurance company's failure to satisfy its financial obligations for an annuity, so long as the fiduciary has complied with the requirements of the SECURE Act.

Elimination of investment option

In addition to ERISA changes, the SECURE Act amends the Code to make lifetime income options portable. If a lifetime income investment option is eliminated from a 401(k), 457(b), or 403(b) plan, then the investment can be distributed (1) in a direct trustee-to-trustee rollover to another plan; or (2) to the participant in the form of an annuity contract purchased by the plan.