

# Details of the SECURE Act: 403(b) Plan Distributions



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# ***SECURE Act: 403(b) Plan Distributions***

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In late December of 2019 President Trump signed into law a budget bill to fund the government for the remainder of the fiscal year. Included as an addition to the bill was the SECURE Act (Setting Every Community Up for Retirement Enhancement Act of 2019). Some of the changes within the SECURE ACT addressed revisions to 403(b) plans.

## ***Section 110 of the Act revised the distribution option for 403(b) plans.***

Prior to the SECURE Act, the employer did not have the right to “force” a participant to take a distribution upon termination of the plan. As a result, if one or more participants did not consent to receiving a distribution from their individual custodial account, the plan could not be terminated.

Also, employers terminating a Section 403(b) plan only had three options to make distributions to the consenting participants. They were:

Distribution of the individual’s annuity contract,

Distribution of the certificate of benefits under a group annuity contract, and

Distributions (in cash or in kind) of the investments held in an annuity contract or a Section 403(b)(7) custodial account. These accounts are limited to investment in mutual funds (treated as an annuity contract for purposes of Code Section 403(b))

After the SECURE Act, if an employer terminates a 403(b)-plan funded with individual custodial accounts, the plan can distribute the assets in kind to the participant or beneficiary new custodial account. The account will be maintained on a tax-deferred basis as a 403(b)(7) custodial account.

This change to the regulations is to ensure that the custodial account will maintain its tax-favored status so long as the distributions follows the requirements of Code Section 403(b) in effect at that time. Also, the account will not be considered to be “distributed” to the participant or beneficiary if the employer retains any material rights under the contract.

Plans should be amended to allow such distributions, and distribution paperwork should be revised accordingly.

*Authors Note: This revision is a welcome change to 403(b) plan sponsors who have been unable to terminate their 403(b) arrangements solely because they lack the authority to mandate distributions from individual custodial accounts.*



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